United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

NO. 76-4243

United States Court of Appeals

FOR THE Second CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

PROTE CONTRACTING CORPORATION, Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D. C. 20570.

UNITED STATES COURT OF APPEALS
FILED
MAR 10 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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In the Matter of: Prote Contracting Corp.

Case Nos.: 29-CA-3704
29-CA-3713
29-CA-3786

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3.29.74	Consolidated Complaint, dated
4.25.74	Notice of Pre-Hearing Conference, dated
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5. 7.74	Hearing opened
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6.21.74	Administrative Law Judge's Decision issued
7.29.74	Respondent's exceptions to the Administrative Law Judge's Decision, received
10.15.74	Board's Decision and Order, dated

FORM NLRB-501 (2-67)

2

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-3709

Date Filed 1-29-74

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: PROTE CONTRACTING CORP.

b. Number of Workers Employed: 12

c. Address of Establishment (Street and number, city, State, and ZIP code): 313 Kingsland Ave., Brooklyn, N.Y

d. Employer Representative to Contact: Mr. Prote

e. Phone No.: 383-3819

f. Type of Establishment (Factory, mine, wholesaler, etc.): painting contractor

g. Identify Principal Product or Service: painting service

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about January 25, 1974, the above-named Employer discharged JUAN POMBO, JOSE GONZALES, JOSE OTERO GONZALES, FELIPE BEIRO, RAMON INSUA, and ISMAEL RIAL because of their membership in, sympathies for, and activities on behalf of District Council No. 9, International Brotherhood of Painters and Allied Trades, affiliated with AFL-CIO and the Building Construction Trades Council.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): JUAN POMBO

4a. Address (Street and number, city, State, and ZIP code): 105 Bennett Avenue, New York, NY

4b. Telephone No.: 568-2054

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ (Signature of representative or person filing charge) Individual (Title, if any)

Address 105 Bennett Ave., New York, N.Y. 568-2054 (Telephone number) 1-29-74 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

AC# 1(a)

29-C-30
(9/67)

3

NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11241

Telephone 596-3535

January 30, 1974

PROTE CONTRACTING CORP.
313 Kingsland Avenue
Brooklyn, New York

Re: PROTE CONTRACTING CORP.

Case No.: 29-CA-3704

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended, A copy of the charge is herewith served upon you.

The investigation of this case has been assigned to Diane Chait (Telephone No. 596-5297).

We enclose a copy of Form NLRB-4541, pertaining to our investigation and voluntary adjustment procedures.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the Courts. In the event you choose to have a representative appear on your behalf, please have your representative complete "Notice of Appearance" Form NLRB-4701 and forward it promptly to this office.

You are requested to submit promptly a complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge, together with any documents, records, memoranda, affidavits, etc., which support your position and statement of facts.

1(6)

In connection with the investigation of this case, it is necessary that the employer execute the enclosed commerce questionnaire. Please forward one completed copy of the questionnaire to this office. You may retain the other copy for your files.

If you would like to discuss this matter before the case is processed further, please telephone the staff member assigned to the case. He will be glad to discuss the matter with you in an effort to dispose of whatever issues may be involved.

Your cooperation with this office is invited so that all facts of the case may be considered.

Very truly yours,

Samuel M. Kaynard

Samuel M. Kaynard
Regional Director

Enclosures
Registered Mail
Return Receipt Requested

cc: Juan Pombo
105 Bennett Avenue
New York, New York

GPO 919-002

...ntify that I have this day served the charge referred to herein by post...
...il on the addressee(s) named above, together with a transmittal letter of wh...
... true copy.

C. Litt

Subscribed and sworn to before me this 30 day of Jan 19 74

Barbara Hunt

Designated Agent

FORM NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-3713

Date Filed 2-1-74

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: PROTE CONTRACTING CORP.

b. Number of Workers Employed: 12

c. Address of Establishment (Street and number, city, State, and ZIP code): 313 Kingsland Ave., Brooklyn, N.Y.

d. Employer Representative to Contact: Mr. Prote

e. Phone No.: 383-3819

f. Type of Establishment (Factory, mine, wholesaler, etc.): painting contractor

g. Identify Principal Product or Service: painting service

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about January 25, 1974, the above-named Employer discharged JUAN POMEO, JOSE GONZALES, JOSE OTERO GONZALES, FELIPE PEIRO, RAMON INSUA, and ISMAEL RIAL because of their membership in, sympathies for, and activities on behalffof District Council No. 9, International Frotherhood of Painters and Allied Trades, affiliated with AFL-CIO and the Building Construction Trades Council.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

District Council No. 9, International Frotherhood of Painters & Allied Trades a/w AFL-CIO & Building & Construction Trades Council

4a. Address (Street and number, city, State, and ZIP code): 69 West 14th St., N.Y., N.Y. 10011

4b. Telephone No.: 255-2950

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Dennis Blumberg (Signature of representative or person filing charge) Business Rep. (Title, if any)

Dennis Blumberg

Address 69 West 14th St.,N.Y.,N.Y. 255-2950 (Telephone number) Feb 1, 1974 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 861-475

(c)

FORM NLRB-501 (2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CC-3786

Date Filed 3-28-74

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: PROTE CONTRACTING CORP.

b. Number of Workers Employed: 12

c. Address of Establishment (Street and number, city, State, and ZIP code): 313 Kingsland Ave., Brooklyn, N.Y.

d. Employer Representative to Contact: Mr. Prote

e. Phone No.: 383-3819

f. Type of Establishment (Factory, mine, wholesaler, etc.): Painting contractor

g. Identify Principal Product or Service: Painting service

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about February 4, 1974, the above-named Employer discharged Euripidis Pantzos because of his membership in, sympathies for, and activities on behalf of District Council No. 9, International Brotherhood of Painters and Allied Trades, affiliated with AFL-CIO and the Building Construction Trades Council.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
District Council N , 9, International Brotherhood of Painters & Allied Trades a/w AFL-CIO & Building & Construction Trades Council

4a. Address (Street and number, city, State, and ZIP code): 69 West 14th Street., New York, New York 10011

4b. Telephone No.: 255-2950

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] Business Rep.
(Signature of representative or person filing charge) (Title, if any)

Address 69 West 14th Street., N.Y., N.Y. 255-2950 March 23, 1974
(Telephone number) (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 861-475

1(e)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

1(g)

PROTE CONTRACTING CORP.

and

JUAN POMBO, An Individual — Cases No. 29-CA-3704

and

DISTRICT COUNCIL NO. 9, INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, AFL-CIO — 29-CA-3713, 29-CA-3786

ORDER CONSOLIDATING CASES, COMPLAINT, NOTICE OF PRE-HEARING CONFERENCE AND NOTICE OF HEARING

It having been charged in Case No. 29-CA-3704 by Juan Pombo, an individual, and in Case Nos. 29-CA-3713, 3786, by District Council No. 9, International Brotherhood of Painters & Allied Trades, AFL-CIO, herein called the Union, that Prote Contracting Corp., herein called the Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, as amended, that these cases be, and they hereby are, consolidated.

1(g)

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15 hereby issues this Consolidated Complaint, Notice of Pre-Hearing Conference and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 29-CA-3704 was filed by Juan Pombo, an individual on January 29, 1974, and served by registered mail upon Respondent, on or about January 29, 1974.

(b) The Charge in Case No. 29-CA-3713 was filed by the Union on February 1, 1974 and served by registered mail upon Respondent, on or about February 1, 1974.

(c) The Charge in Case No. 29-CA-3786 was filed by the Union on March 28, 1974, and served by registered mail upon Respondent on or about March 28, 1974.

2. Respondent is and has been at all times material herein a corporation duly organized under, and existing by virture of, the laws of the State of New York.

3. At all times material herein, Respondent has maintained its principal office and place of business at 313 Kingsland Avenue, in the Borough of Brooklyn, City and State of New York, where it is, and has been at all times material herein, continuously engaged in performing general building construction contracting and related services.

4. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations, performed services valued in excess of $50,000, for the City of New York, which purchases goods and materials valued in excess of $50,000 directly from outside the State of New York.

5. Respondent, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. The Union is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

7. (a) Theoclites Demetriades, is, and has been at all times material herein, the President, of Respondent, acting on its behalf, and an agent thereof.

(b) Alpfonso Castro, James Satchell, and Jerry Pisciotta, are, and have bee at all times material herein, agents of Respondent, acting on its behalf, and supervisors thereof within the meaning of Section 2(11) of the Act.

8. Since in or about September 1973, the Union has been engaged in a campaign to organize Respondent's employees employed as painters and painter helpers.

9. On January 23, 1974, the Union filed a petition in Case No. 29-RC-2551 for an election to determine whether a majority of Respondent's painters and painter helpers wished the Union to represent them for the purposes of collective bargaining within the meaning of the Act.

10. On or about January 18, 1974, Respondent, by Theoclites Demetriades, its President, and its agent, threatened its employees with discharge, termination of its paint work, sub-contracting its paint jobs, and other reprisals if they became or remained members of the Union, and if they gave any assistance and support to it.

11. On or about February 4 and March 11, 1974, Respondent, by Theoclites Demetriades, its President, and its agent, interrogated its employees concerning the employees' membership in, activities on behalf of, and sympathy in and for the Union.

12. On or about March 11, 1974, Respondent by Theoclites Demetriades its President, and its agent, promised its employees reinstatement to their former substantially equivalent jobs, from which they had been discharged as described infra in paragraphs 13, 14, and 15 to induce them (a) to refrain from becoming or remaining members of the Union, and to refrain from giving

any assistance or support to it, and to induce them to abandon their membership in and activity on its behalf; and (b) to induce them to withdraw or to have the unfair labor practice charges withdrawn in Cases No. 29-CA-3704, 3713, and 3786.

13. On or about January 25, 1974, Respondent laid off its employees Juan Pombo, Jose Gonzales, Jose Gonzales Otero, Felipe Beiro, Ramon Insua, and Ismael Rial; and, on or about February 4, 1974, its employee Euripidis Pantzos.

14. Since the dates of the layoff of the employees as described above in paragraph 13, Respondent has failed and refused to recall, or offer to recall, said employees to their former or substantially equivalent positions of employment.

15. Respondent laid off and thereafter failed and refused to recall its employees Juan Pombo, Jose Gonzales, Jose Gonzales Otero, Felipe Beiro, Ramon Insua, Ismael Rial and Euripidis Pantzos, as described above in paragraphs 13, and 14, because (a) said employees joined and assisted the Union, and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection;

(b) Said employees filed and were instrumental in the filing of the unfair labor charges in Cases No. 29-CA-3704, 3713, and 3786.

16. by the acts described above in paragraphs 10 through 15 and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

17. By the acts described above in paragraphs 13, 14, and 15 and by each of said acts, Respondent, discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

18. By the acts described above in paragraphs 13, 14 and 15, and by each of said acts, Respondent discriminated and is discriminating against employees for having filed charges and giving testimony under the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(4) and Section 2(6) and (7) of the Act.

19. The acts of Respondent described above in paragraphs 10 through 15 occurring in connection with the operations of Respondent, described above in paragraphs 2 through 5, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 22nd day of April, 1974, at 3:00 P.M., at the Ceremonial Courtroom, 2nd floor, U.S. District Court, 225 Cadman Plaza East, in the Borough of Brooklyn, City and State of New York, a pre-hearing conference will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board.

PLEASE TAKE FURTHER NOTICE that on the 7th day of May, 1974 at 11:00 A.M. at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, in the City and State of New York and consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board In Unfair Labor Practices Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York, this 29th day of March, 1974.

Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

GPO 941-769

1(J)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

- -

PROTE CONTRACTING CORP.

and

JUAN POMBO, An Individual

and

DISTRICT COUNCIL NO. 9, INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, AFL-CIO.

Cases No. 29-CA-3704
29-CA-3713
29-CA-3786

ANSWER

- -

Respondent, for its answer to the complaint, alleges as follows:

1. Denies each and every allegation set forth in Paragraphs 4, 5, 10 through 12, 14 through 19, of the complaint.

2. Denies information or knowledge sufficient to form a belief as to each and every allegation set forth in Par - graphs 1 (a), (b), (c), 6, 8 and 9, of the complaint

3. Denies each and every allegation set forth in Paragraph 3 of the complaint, except that the respondent maintains offices at 313 Kingsland Avenue, Brooklyn, New York.

Dated: Queens, New York
April 25, 1974.

Yours, etc.,

KLEIN & FEINSTEIN, P.C.
Attorneys for Respondent
90-14 Elmhurst Avenue
Jackson Heights, N.Y. 11372
212 HI 6-2288

TO:

NATIONAL LABOR RELATIONS BOARD
REGION 29
16 Court Street
Brooklyn, N.Y. 11241

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

- -

PROTE CONTRACTING CORP.

and

JUAN POMBO, An Individual

DEMAND FOR BILL OF PARTICULARS

and

DISTRICT COUNCIL NO. 9, INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, AFL-CIO.

- -

S I R S :

PLEASE BE ADVISED that you are required to serve the following particulars of your complaint:

1. Set forth how the sum of $50,000.00 for purchases of goods and materials outside the State of New York is arrived at as set forth in Paragraph 4 of the complaint.

2. State whether the threats alleged in Paragraph 10 of the complaint were written or oral. If written, annex true copies. If oral, set forth which employees were threatened and the substance of the threat.

3. Set forth what "other employees" were threatened as set forth in Paragraph 10 of the complaint.

4. Set forth which employees were interrogated as set forth in Paragraph 11 of the complaint.

5. Set forth which employees were promised reinstatement as alleged in Paragraph 12 of the complaint.

6. State whether the employees named in Paragraph 15 of the complaint were ever reinstated by respondent.

7. Annex copies of all charges filed by employees named in the complaint.

8. Set forth copies of all charges filed by the Union against respondent.

Dated: Queens, New York
April 25, 1974.

Yours, etc.,

KLEIN & FEINSTEIN, P.C.
Attorneys for Respondent
90-14 Elmhurst Avenue
Jackson Heights, N.Y. 11372
212 HI 6-2288

TO:

NATIONAL LABOR RELATIONS BOARD
REGION 29
16 Court Street
Brooklyn, N.Y. 11241

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

1(K)

PROTE CONTRACTING CORP.

and

JUNA POMBO, An Individual

and

DISTRICT COUNCIL NO. 9, INTERNATIONAL
BROTHERHOOD OF PAINTERS & ALLIED
TRADES, AFL-CIO

SUMMARY OF PREHEARING CONFERENCE

I. Complaint

Par. 1. Admitted

Par. 2. Admitted

Par. 3. Respondent admits engaged in business of painting contractor at address in complaint.

Par. 4. Admits $50,000 for Board of Eduction of New York City.

Par. 5. Denied

Par. 6. Admitted

Par. 7. Admitted

Par. 8. Respondent pleads no knowledge

Par. 9. Admitted

Par.10. Denied

Par.11. Denied

Par.12. Denied

Par.13. Admitted

Par.14. Respondent admits no offer to recall except in case of Pantros.

II. Bill of Particulars

Par. 1. Withdrawn

Par. 2. Oral threats

Par. 3. "Other employees "typographical ~~omv.~~ error. Substitute " other reprisals." G.C. has no present information of any other reprisals.

Par. 4. G. C. refuses to disclose

Par. 5. G. C. refuses to disclose

Par. 6. Withdrawn

Par. 7. G. C. will submit copies of charge

Par. 8. G. C. will submit copies of charge

III. Settlement Discussion

Parties discussed settlement in terms of Respondent placing employees on preferential hiring list and submitting issue of back pay to compliance hearing. Respondent's position is that no back pay is due because ~~it's~~ employees were never replaced and no work has been available, and that preferential hiring is objectiable because it will insure majority for Union.

Respondent also denies discrimination, contending lay off due to termination of job.

General Counsel contends that any lack of work was contried by Respondent to support discriminatory ~~laidoff~~ lay off.

Parties agree to explore further settlement ~~again to replace~~ justion before trial date (May 7).

April 29, 1974
Date

Audrey Sherman
Sidney Sherman
Administrative Law Judge

20

NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11201

Telephone 596-3535

May 1, 1974

Prota Contracting Co., Inc.
213 Kingsland Avenue
Brooklyn, New York

Juan Pombo
103 Bennett Avenue, Apt. 6A
New York, New York 10033

District Council No. 9, AFL-CIO
69 West 14th Street
New York, New York 10011

Michael Dennis, Esq.
c/o District Council No. 9, AFL-CIO
69 West 14th Street
New York, New York 10011

Sheldon E. Feinstein, Esq.
90-14 Elmhurst Avenue
Jackson Heights, New York

RE: Prota Contracting Corp.
Case No. 29-CA-3704
3713
3786

Gentlemen:

Enclosed herewith is a copy of the Summary of Pre-hearing Conference as recorded by Administrative Law Judge Sidney Sherman during the pre-hearing conference concerning the above-captioned case held on April 29, 1974 at this office.

Very truly yours,

Howard Edelman
Counsel for General Counsel

REGISTERED MAIL,
RETURN RECEIPT REQUESTED
HE.

R-1

PROTE CONTRACTING CO., INC.
313 KINGSLAND AVENUE
BROOKLYN 22, N. Y.
EVERGREEN 3-3819

August 13,1973.

Board of Education of the City of New York
Queens Area Office
78-02 Liberty Avenue
Ozone Park,N.Y.11417

BREAK DOWN OF WORK SHEDULE AT PUBLIC SCHOOL 165,Queens
Contract # 705939,Spec.# 276

2.1 CONCRETE AND CEMENT WORK: S.F 650 x 1.50	975.00
2.2 MASONRY WORK : windows 350 x 3.00	1.050.00
2.3 MAJOR PLASTER REPAIRS S.Y. 9 x 10.00	90.00
2.4 ACOUSTICAL TILE CEILING:S.F.2000 x 1.50	3.000.00
2.5 HOLLOW METAL WORK: partitios 3 x 125	375.00
2.6 MISCELL.METAL WORK : L.S.	300.00
DISPLAY BOARDS : S.F.2100 x 3.00	6.300.00
2.7 WIRE MESH WORK: L.S.	200.00
2.8 Window REPAIRS : L.S.	300.00
2.10INTERIOR PAINTING :	
SPRAY ACOUSTICAL PLASTER and ACOUSTIC TILES	3.000.00
3rd floor C.R.U. 18 x 220	3.960.00
2nd floor C.R.U. 18 x 220	3.960.00
1st floor C.R.U. 20 x 220	4.400.00
Basement L.S.	300.00
Stairs L.S.	2.000.00
Varnish desks and tables	1.000.00
EXTERIOR PAINTING: Entire premises L.S.	5.000.00
RIFINISH GYM FLOOR : S.F. 4500 x .32	1.440.00
".12 AUDITORIUM STAGE CURTAINS: L.S.	2.220.00
	39.370.00

PROTE CONTRACTING CO., INC.

SEP 10 10 39 AM '73
BOARD OF EDUCATION
BUREAU OF PLANT CHANGE
QUEENS

22

R-3

PROTE CONTRACTING CO., INC.
313 KINGSLAND AVENUE
BROOKLYN 22, N. Y.
EVERGREEN 3-3819

October 11,1973.

Board of Education City of New York
Queens Area Office
78-02 Liberty Avenue
Ozone Park N.Y.11417

RE: P.S.New town H.S.Queens
Contract # 705947
Spec.# 156 -1971/72

WORK BREAKDOWN

Interior and Exterior Painting			
4th and 5th floor C.R.U.	30 x 200	6.000.00 ✓	
3rd floor C.R.U.	49 x 200	9.800.00 ✓	
2nd floor C.R.U.	54 x 200	10.800.00 ✓	
1st floor C.R.U.	49 x 200	9.800.00 ✓	
Basement C.R.U.	43 x 200	8.600.00 ✓	
Stairs Singles	49 x 115	3.332.00 ✓	
Exterior windows	547 x 10	5.470.00 ✓	
window guards	140 x 8	1.120.00 ✓	
B.I.Fence	L.S.	1.640.00 ✓	56.612.00
Incidental Repairs			
Masonry work		200.00 ✓	
Caulking		1.000.00 ✓	
Ceramic tile repairs		100.00 ✓	
Acoustic tile repairs		800.00 ✓	
Window repairs		2.500.00 ✓	
Gym refinish		3.000.00 ✓	
Resilient floor		500.00 ✓	
Furniture refinishing		750.00 ✓	8.850.00
		1 800.00	
As per Contract			65.462.00

Very truly yours,
Prote Contracting Co., Inc.

OCT 15 10 09 AM '73
BUREAU OF MAINTENANCE
QUEENS

WA
-143102

In the matter of
No. Pages
Witness
Reporter
Disposition
Identified
Received
Rejected
Docket No.
OFFICIAL EXHIBIT

23 R-6

PROTE CONTRACTING CO., INC.
313 KINGSLAND AVENUE
BROOKLYN, N. Y. 11222
EVERGREEN 3-3819 · 389-8813

January 21, 1974

Casual Decor Corp.
8-15 27th Ave.
Astoria, New York

Re: Sarah J. Hale High School Annex
Spec. # 488 72/73

Gentlemen:

Please sign and return one copy of this correspondence indicating your acceptance of this proposal.

Proceed with the painting and finishing at the above mentioned school as per paragraph 2.1of above menioned specification, all blueprints,standard details, and applicable standards.

All work included above for the sum of $10,500.00-----
------TEN THOUSAND FIVE HUNDRED------

Casual Decor
By:_____

Prote Contracting Co. Inc
By:_____

Very truly yours,
Prote Contracting Co. Inc
By:_____
T. Demetriades Pres.

24 O R-1

CASUAL DECOR PAINTING, Inc.

20-21 - 46TH ST. ASTORIA, N. Y. 11105
(212) 274-7405

7/13/73

Prote Contracting Co., Inc.
313 Kingsland Ave.
Brooklyn, N.Y. 11222

Re: Sarrah J. Hale H.S. Annex
Spec.# 488-72/73

As per your request, we propose to paint the interior and exterior of the above premises as per Board of Education specification for the amount of $11,000.-

CASUAL DECOR PAINTING, INC.

By _____
A. Kefalogiannis, Pres.

ACCEPTED

By _____

COPY FOR THE CONTRACTOR

Form C6-2500 3/71

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET, BROOKLYN, N. Y. 11201

R-8

12/6/73

Prote Contracting Co., Inc.
313 Kingsland Ave.
Brooklyn, N.Y.

Dear Sir(s):

I wish to advise you that your contract for General Construction for part. modern

At Primary School 194

Borough of Brooklyn, dated 11/26/73, 19____ was approved by the

Comptroller on 11/29/73, 19____ and is therefore a valid contract. The contract time begins to run 3 days from the date of this notification, in accordance with Art. 12 of the contract.

Respectfully yours,

Contract No. 221273 $ 95,690.
Auditor's No. 40-4504-12-53

HAROLD SIEGEL
Secretary, Board of Education.

Call at Room 201 for contract.

NOTE. — Your security deposit will be returned to you through the mail by the Security Deposit Clerk of the Comptroller's Office, Room 800B, Municipal Building, Borough of Manhattan.

(COPY FOR THE CONTRACTOR)

RM C4-5M 12/70

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET, BROOKLYN, N. Y. 11201

R-9

Prote Contracting Co., Inc.
313 Kingsland Ave.
Brooklyn, N.Y.

2/8/74

Dear Sir(s):

I wish to advise you that your contract for Misc. replacement painting & fin.

_____ At P.S. 75 _____

Borough of Brooklyn, dated 1/31/74, 19____ was approved by the Comptroller on 2/4/74, 19____ and is therefore a valid contract. The contract time begins to run 3 days from the date of this notification, in accordance with Art. 12 of the contract.

Respectfully yours,

Contract No. 706391 $ 142,700.
Auditor's No. 40-4538-11-53

HAROLD SIEGEL
Secretary, Board of Education.

Call at Room 201 for contract.

NOTE.—Your security deposit will be returned to you through the mail by the Security Deposit Clerk of the Comptroller's Office, Room 800B, Municipal Building, Borough of Manhattan.

JD-429-74
Brooklyn, N. Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

PROTE CONTRACTING CORP.

and

Case No. 29-CA-3704

JUAN POMBO, An Individual

and

Cases Nos. 29-CA-3713 and
29-CA-3786

DISTRICT COUNCIL NO. 9, INTERNATIONAL
BROTHERHOOD OF PAINTERS & ALLIED
TRADES, AFL-CIO

Howard Edelman, Esq., of Brooklyn, N. Y.,
for the General Counsel.
Michael Dennis, Esq., of Garden City,
N. Y., and Mr. Dennis Blumberg, of
New York, N. Y., for the Charging
Union.
Sheldon Feinstein, Esq.; Klein and
Feinstein, P. C. of Jackson Heights,
N. Y., for Respondent Employer.

DECISION

Statement of the Case

PAUL E. WEIL, Administrative Law Judge: On January 29, 1974, Juan Pombo filed with the Regional Director for Region 29, of the National Labor Relations Board, hereinafter called the Board, a charge alleging that Prote Contracting Corporation violated Section 8(a)(1) and (3) of the Act by discharging Pombo and five other employees because of their membership in District Council No. 9, International Brotherhood of Painters & Allied Trades, affiliated with AFl-CIO and the Building Construction Trades Council. On February 1, 1974, District Council No. 9, International Brotherhood of Painters & Allied Trades, AFL-CIO, hereinafter called the Union, filed a charge (29-CA-3713) with the said Regional Director containing the same allegation. On March 28, 1974, the Union filed a second charge (29-CA-3786) alleging that Respondent discharged an additional employee, Euripidis Pantzos, for the same reason. On March 29, 1974,

the said Regional Director on behalf of the Board's General Counsel issued a complaint alleging that Respondent violated Section 8(a)(3) of the Act by laying off and thereafter failing and refusing to recall seven named employees and by those layoffs and by interrogations and threats directed to its employees violated Section 8(a)(1) of the Act. 1/ By its duly filed answer Respondent denied the commission of any unfair labor practices. On the issues thus joined the matter came on for hearing before me in Brooklyn, New York, on May 7 and 8, 1974. All parties were present or represented by counsel and had an opportunity to call and examine witnesses and to adduce relevant and material evidence. At the close of the hearing the General Counsel and Respondent delivered oral argument on the record and waived briefs.

On the entire record in this matter and in consideration of the oral arguments, I make the following:

Findings of Fact

I. Jurisdiction

Respondent is a corporation operating in Brooklyn, New York, in the business of general construction. Respondent operates solely as a contractor to the school board of Queens County for which it does such maintenance work as painting, plastering, tiling, installing windows and the like on a contractual basis. Respondent annually derives from the city of New York income in excess of $50,000 from the work it performs for the school board. The city of New York annually purchases goods and materials valued in excess of $50,000 directly from outside the State of New York. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

Background

It appears that prior to 1968 Prote Contracting Corporation performed its painting and related work with employees, under a union contract. In 1968, the president and chief operating authority of

---

1/ The complaint also alleged a violation of Section 8(a)(4) of the Act by the same acts and conduct and by additional acts and conduct. During the hearing, it appearing that one of the alleged discriminatees was no longer in this country, the General Counsel withdrew the 8(a)(4) and connected 8(a)(1) allegations.

Respondent, Theoclites Demetriades, who is generally called Mr. Prote by his employees informed the Union that he would thereafter operate solely as a general contractor, subcontracting his painting work.

In November 1971, Respondent signed a memorandum agreement that any work under the jurisdiction of the Union called for in Respondent's contracts would be reported to the Union and that any subcontractors who did such work would be "signed with District Council No. 9." This contract expired on November 18, 1972 and was apparently not renewed.

In the fall of 1973, the Union received information that in one of its contract jobs Respondent, instead of subcontracting the painting was using its own employees. At this time Respondent had no contract with the Union. The Union's business agent, Blumberg, met Demetriades at a jobsite and suggested that he sign a contract with the Union. Demetriades declined to do so telling the Union to sign up other painting contractors first and then he would sign a contract.

In December Blumberg had discussions with some of the employees concerning their joining the Union. At this time Respondent's painting crew consisted largely of Spanish employees who spoke little or no English. 2/ The Union's contacts with the employees generally were through one of the foremen, Alphonso Castro, who is also Spanish and with whom one of the employees lived. The employees agreed with Castro that they should join the Union, apparently largely because of the fringe benefits offered by the Union in the form of medical and dental insurance.

On January 18, Blumberg met with the employees on the jobsite just before noon and they apparently all agreed to sign authorization cards, however he had none with him. Demetriades arrived at noon, Blumberg and two other union agents who were with him shook hands with Demetriades and suggested that he come down to the union hall and sign an agreement. Demetriades again said that when the other contractors doing work for the Board of Education signed a contract he would. At this point Blumberg told him that the employees were willing to sign union cards and Demetriades responded that he had no more work and would discharge the employees. Blumberg argued that he knew that Respondent had more work from contracts that he had received from the Board of Education. Nevertheless Demetriades said that he had no more work and would discharge the employees.

Blumberg and his fellow organizers went to their office, got a supply of authorization cards and returned to a bar at which they had arranged to meet the employees, all of whom together with Foreman Castro signed authorization cards.

On January 23, the Union filed a petition for an election among the painters and helpers employed by Respondent.

2/ With the exception of one employee, Pantzos, who spoke only Greek.

At the time of the above occurrences Respondent was working with painters in two schools. At P. S. (Public School) 165 two employees, Jose Gonzales Otero and Juan Pombo, were employed under the direction of Foreman Castro. At the New Town High School, Ramon Insua, Ismael Rial, Jose Pepe Conzales, Euripidis Pantzos, Desiderio Pombo, Luis Castro and Felipe Beiro were working under the direction of Foreman James Satchell. On January 25 both employees, Otero and Juan Pombo, at P. S. 165 and four of the employees at New Town, Ramon Insua, Ismael Rial, Pepe Gonzales and Felipe Beiro, were laid off for lack of work. There was less than 1 percent of the work left to be done at P. S. 165 and it remained uncompleted on the day of the hearing. Both foremen and the three remaining employees, Pantzos, Desiderio Pombo and Luis Castro, continued working at the New Town High School job.

On February 4, 1974, Pantzos having received his W-2 form, thought that it showed less deductions than had been made from his wages. He asked Foreman Castro about this and Castro took him to Respondent's office where he confronted Demetriades and asked him about what he conceived to be a mistake. Demetriades apparently answered in a volatile fashion and told Pantzos that he was not trying to steal from him and that his W-2 form was correct. According to Pantzos' version of the interview, as he walked in to "Mr. Prote's" office, Demetriades said "are you a Mafioso?" Pantzos asked why he used that word and Demetriades answered, "because the people in the Union are Mafiosos, are you with the Union too?" Pantzos responded that he did not know and Demetriades asked him why he came there.

According to Demetriades' testimony he said nothing about Mafioso or about the Union but gave Pantzos a check for the 3 days' work that he had earned up to that time and told him that when more work was available he would call him back. Demetriades testified that he in fact called Pantzos back to work. He explained that when Pantzos filed for unemployment compensation, he, Demetriades informed the Labor Department that he had work for Pantzos but that Pantzos thereafter never cortacted him. There is no indication that Demetriades ever contacted Pantzos directly. Pantzos testified that the unemployment people told him that Prote had called and said that he should come back to work. He asked whether he would be paid the union wage and was told that they did not know. He never went back to work for Respondent. Apparently the job he was doing when he was laid off, scraping the gymnasium floor, remained uncompleted. It appears thereafter that some of this work has been completed by the remaining employees and supervisors.

Demetriades testified that he laid the employees off because he had no more work for them, although he has at present several contracts from the School Board remaining to be done.

The record contains a letter addressed to Respondent from Casual Decor Painting, Inc., dated July 18, 1973 stating:

As per your request, we propose to paint the interior and exterior of the above premises as per Board of Education specifications for the amount of $11,000.

On January 21, 1974, Respondent wrote to Casual Decor Corporation, the following letter:

Gentlemen:

Please sign and return one copy of this correspondence indicating your acceptance of this proposal. Proceed with the painting and finishing at the above-mentioned school (Sarah J. Hale High School Annex) as per paragraph 2.1 of above-mentioned specification, all blue prints, standard details, and applicable standards. All work included above for the sum of $10,500.

The letter contains a signature line for Casual Decor which bears a signature similar to that which appears on the July 18, 1973 letter. Respondent contends that the subcontracting of the work at Sarah J. Hale High School Annex had been in its contemplation since July and that nothing remained to be done but the ministerial act of signing the contract.

The record also reveals that Casual Decor Painting commenced on or about February 8, 1974 and is still working on the Sarah J. Hale school job. In addition it appears that Respondent has contracts for painting at three other schools. The painting in none of them has been commenced and no subcontracts have been let for them. There is no evidence that any subcontractor has been asked to bid on any of these three schools. Although Demetriades testified that a subcontractor must be approved by the Board of Education and that he must notify the Board that he wants to subcontract and get their permission to do so, he testified that he has not received written permission to subcontract the painting work at Sarah J. Hale nor has he asked for permission to subcontract the work in any of the other schools. Indeed he testified that he expected to subcontract the work at these three schools but has not yet selected the subcontractors. He testified further that he did not have to notify the School Board, an apparent contradiction to testimony he had earlier given.

Discussion and Conclusions

I conclude that Respondent, faced with what he conceived to be additional costs of operating under a union contract, determined to subcontract his painting work. For this reason he subcontracted the Sarah J. Hale work which is presently being done by another firm and he contemplates subcontracting other contracts that he has already been awarded by the School Board. As a result of this fact all of Respondent's employees have been laid off.

Respondent contends that its decision to subcontract the Hale job preceded the advent of the Union. However the July 18, 1973 letter was not in any way proven other than it came from Respondent's file. Respondent argued with regard the Hale job that its early determination to subcontract is demonstrated by the fact that it got a bid from the subcontractor before it submitted its bid to the School Board. However the force of this argument is completely dissipated by the fact that Respondent made no such arrangements with regard to the additional three schools which now it expects to subcontract, nor has it selected a subcontractor. I conclude that Respondent did not decide to subcontract the Hale job until after January 18, 1974 when it learned that all of its employees had signed union cards and that its decision to subcontract is the direct result of the employees' union activity.

The Employer has a right to abandon all or part of his business rather than deal with the Union, 3/ but if he chooses to avoid dealing with the Union by staying in business and subcontracting the work that would be done by the employees who chose the Union, thereby effectively discharging such employees, he violates Section 8(a)(3) and (1) of the Act. 4/ This appears to be precisely what Respondent did in the instant case. Demetriades testified that none of his painting work was subcontracted in the year 1973, although it appears that at an earlier time he had attempted to rescind the union contract by subcontracting all of his painting work and thereafter had agreed with the Union that his painting work would be subcontracted only to contractors who had contracts with the Union. It thus appears that the decision of whether to subcontract the painting work depended largely if not solely on whether Respondent could work with his own employees without the intervention of the Union. Upon the appearance of the Union, Respondent promptly began subcontracting. I find that by so doing Respondent violated Section 8(a)(1) and (3) of the Act and that the employees named in the complaint were laid off or discharged in violation of Section 8(a)(3).

The Independent 8(a)(1) Allegations

The 8(a)(1) allegations are supported on the record only to the extent that Pantzos testified that he was asked by Demetriades whether he was a Mafioso, which Demetriades explained as meaning a union man. It is admitted by Respondent that it knew of the union activities of its employees and there was no secret about it. The "interrogation" of Pantzos was more in the nature of rhetorical abuse than an interrogation. It is not intrinsically coercive but merely illustrates the animosity of Demetriades against the Union. I do not find that it violates Section 8(a)(1) inasmuch as I believe it has no tendency to interfere with, restrain or coerce employees. Accordingly I recommend that the complaint be dismissed insofar as this is alleged to be a violation.

3/ N.L.R.B. v. Darlington Manufacturing Company, 380 U.S. 263.

4/ Walker Company 183 NLRB No. 136 and cases therein cited.

The Discharge of Euripidis Pantzos

Respondent contends that Pantzos was discharged, as Pantzos testified, because he complained about his income tax. It is clear that Pantzos was among the employees who are affected by Respondent's subcontracting work and to the extent that his future employment was thereby affected, I find that he was discriminated against as were his fellow employees. Pantzos, however, was one of those retained by Respondent to complete the job at the New Town High School. When on February 8 he was laid off by Respondent he had several days' work remaining. This work has not yet been done. At the time of his layoff Demetriades first accused him of being a union man and then discharged him, I find that the twin irritations of Pantzos having joined the Union and his questioning his income tax deductions resulted in his premature layoff. When Respondent realized that he had several days' work left for Pantzos on his specialty of scraping the gymnasium floors and found that Pantzos was applying for unemployment, he told the unemployment people to send Pantzos back to him and Pantzos did not come. While this will affect Pantzos' backpay to the extent of the time it would have taken for him to finish the gymnasium floor scraping, it does not affect the ultimate conclusions of discrimination resulting from the subcontracting aspect of the case. Accordingly I conclude that Pantzos was indeed twice discriminated against, individually and collectively, in violation of Section 8(a)(1) and (3).

IV. The Effect of the Unfair Labor Practices upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

Upon the basis of the above findings of fact and upon the entire record in this case, I make the following:

Conclusions of Law

1. Prote Contracting Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Ramon Insua, Ismael Rial, Jose Pepe Gonzales, Felipe Beiro, Jose Gonzales Otero, Juan Pombo and Eruipidis Pantzos because they sought to have the Union represent them for purposes of collective bargaining, Respondent has discriminated against employees in violation of their rights guaranteed in Section 7 of the Act thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By laying off Euripidis Pantzos on February 8, 1974 because of his union activities Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By the layoff and discharge of the employees set forth in subparagraphs 3 and 4 above, Respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and that it take certain affirmative action which is necessary to effectuate the policies of the Act. I found that Respondent subcontracted its painting operation and discharged its painting employees because they joined the Union and authorized the Union to bargain collectively on their behalf. Accordingly I shall recommend that Respondent be ordered to reestablish its painting operation and reinstate its painting employees. 5/ Respondent shall also make its painting employees whole by paying them the earnings which they normally would have received from the date of their discharge to the date of Respondent's offer of reinstatement less any net interim earnings, which shall be computed on a quarterly basis in the manner set forth in F. W. Woolworth Company, 90 NLRB 289, with interest at the rate of 6 percent per annum as set forth in Isis Plumbing & Heating Co., 138 NLRB 716.

Upon the foregoing findings and conclusions and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 6/

5/ The remedial provisions of this order do not pertain to Felipe Beiro, inasmuch as the General Counsel stated that Beiro has been deported to Spain.

6/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent, Prote Contracting Corp., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in District Council No. 9, International Brotherhood of Painters & Allied Trades, AFL-CIO, or any other organization of its employees by discharging or otherwise discriminating against them in regard to their hire or tenure of employment or other term or condition of employment.

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist District Council No. 9, International Brotherhood of Painters & Allied Trades, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from engaging in such activities.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Reestablish its painting operation and offer to Ramon Insua, Ismael Rial, Jose Pepe Gonzales, Jose Gonzales Otero, Juan Pombo and Euripidis Pantzos immediate and full reinstatement to their former jobs or if those jobs no longer exist to substantially equivalent positions without prejudice to their seniority or other rights and privileges and make each of them whole for any loss of earnings he may have suffered as a result of the discrimination against him in the manner provided in the section of this Decision entitled "The Remedy."

(b) Preserve and upon request make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to determine the amount of backpay due and the rights of reinstatement under the terms of this Order.

(c) Post at its place of business in Brooklyn, New York, copies of the attached notice marked "Appendix." 7/ Copies of said notice,

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7/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

on forms provided by the Regional Director for Region 29, shall after being duly signed by an authorized representative of Respondent, be posted by Respondent immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Decision what steps it has taken to comply herewith.

Dated at Washington, D. C. JUN 21 1974

Paul E. Weil

Paul E. Weil
Administrative Law Judge

APPENDIX JD-429-74

FORM NLRB-4727
(9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

After a trial at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and we intend to carry out the Order of the Board and abide by the following:

The Act gives all employees these rights:

To engage in self-organization
To form, join, or help unions
To bargain collectively through representatives of their choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all of these things.

WE WILL NOT do anything that interferes with, restains, or coerces employees with respect to these rights.

WE WILL NOT discourage membership in District Council No. 9, International Brotherhood of Painters & Allied Trades, AFL-CIO, or any other labor organization of our employees by discharging them or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL offer to Ramon Insua, Ismael Riel, Jose Pepe Gonzales, Euripidis Pantzos, Jose Gonzales Otero, and Juan Pombo immediate and full reinstatement to their former jobs of if these jobs no longer exist to substantially equivalent positions without prejudice to their seniority or other rights and privileges and make each of them whole for any loss of pay he may have suffered as a result of our discrimination against him.

PROTE CONTRACTING CORP.
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241. Telephone (212) 596-3535.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

PROTE CONTRACTING CORP.

and

JUAN POMBO, an Individual

and

DISTRICT COUNCIL NO. 9,
INTERNATIONAL BROTHERHOOD
OF PAINTERS & ALLIED TRADES,
AFL--CIO

Case 29--CA--3704

Cases 29--CA--3713 and
29--CA--3786

DECISION AND ORDER

On June 21, 1974, Administrative Law Judge Paul E. Weil issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent, Prote

Contracting Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. OCT 15 1974

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

CERTIFICATE

This is to certify that the attached proceedings before the NATIONAL LABOR RELATIONS BOARD for the 29th REGION in the matter of:

PROTE CONTRACTING CORP.

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

C S A REPORTING CORPORATION
OFFICIAL REPORTERS

By _____
Field Reporter

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

In the Matter of:	:	
PROTE CONTRACTING CORP.	:	
-and-		
JUAN POMBO, An Individual	:	CASES NO.
-and-		29-CA-3704
DISTRICT COUNCIL NO. 9,		29-CA-3713
INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES,	:	29-CA-3786
A.F.L.-C.I.O.	:	

16 Court Street
Brooklyn, New York
May 7, 1974

The above entitled matter came on for hearing, pursuant to Notice at 11:10 A. M.

BEFORE:

PAUL E. WEIL, Administrative Law Judge

APPEARANCES:

HOWARD EDELMAN, ESQ.	16 Court Street, Brooklyn, New York, appearing on behalf of the General Counsel.
SHELDON FEINSTEIN, ESQ.	Klein and Feinstein, P. C., 90-14 Elmhurst Avenue, Jackson Heights, New York 11372, appearing on behalf of the Respondent Employer.
MICHAEL DENNIS, ESQ.	600 Old Country Road, Garden City, New York, appearing on behalf of the Union.
DENNIS BLUMBERG, Business Representative	69 West 14th Street, N.Y., N.Y., appearing on behalf of District Council No. 9.

oOo

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
DENNIS BLUMBERG	7	46	--	--
EDWARD TOPP	62	72	--	--
EURIPIDIS PANTZOS	77	92	105	---
JOSE GONZALES OTERO	107	113	---	---
RAMON INSUA	118	124	---	---
JUAN POMBO	127	133	139	---
ISMAEL RIAL	141	144	---	---
JOSE GONZALES	147	148	---	---

E X H I B I T S

GENERAL COUNSEL'S EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
1-A to 1-M	--	4
2	10	13 (Rejected)
3	20	23

oOo

P R O C E E D I N G S

JUDGE WEIL: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Prote Contracting Corp. and Juan Pombo, an individual, and District Counsel No. 9, International Brotherhood of Painters and Allied Trades, A. F. L. - C. I. O., Cases No. 29-CA-3704, 3713 and 3786.

The Administrative Law Judge designated to hear this matter is Paul E. Weil, W-E-I-L.

Commencing with Counsel for the General Counsel, will the representatives of the parties state their appearances?

MR. EDELMAN: Appearing for General Counsel is Howard Edelman, E-D-E-L-M-A-N.

MR. FEINSTEIN: For the Respondent, Klein and Feinstein, by Sheldon Feinstein, 90-14 Elmhurst Avenue, Jackson Heights, New York.

JUDGE WEIL: Are there any other appearances? I hear none.

Mr. Edelman, will you introduce General Counsel's Exhibit No. 1?

MR. EDELMAN: Yes, I will.

At this time I would like to have marked and offer into evidence, General Counsel's Exhibit 1,

which consists essentially of the charge, the Complaint, Answer, Notice of Pre-Trial Conference, and Summary of the Pre-Trial Conference.

JUDGE WEIL: That's 1-A through M.

Is there any objection to the receipt of 1-A through M?

MR. FEINSTEIN: No objection, Your Honor.

JUDGE WEIL: It's received.

(Whereupon, the above referred to was received and marked General Counsel's Exhibit 1-A-M in evidence

JUDGE WEIL: I understand that when the parties were served with the Complaint, they received with it a statement of the Board's procedures in proceedings of this kind, and this hearing will be conducted in accordance with that statement.

I'm sure that Mr. Edelman will be happy to give anyone a copy that wants one.

MR. EDELMAN: That is correct, Your Honor.

JUDGE WEIL: I understand also that there has been some discussion of settlement in this matter, but it has not bourn fruit.

Does anyone think that at this time further discussion -- if further discussion were undertaken, it might bear fruit?

MR. EDELMAN: Counsel for General Counsel

is always available for settlement talks.

There have been no further settlement talks on my part with either the Union or the Employer.

If the parties feel at this time that any settlement talks would be fruitful, I would be glad to assist in any way.

JUDGE WEIL: I noticed in Judge Sherman's resume of a prehearing conference, he indicated that the parties had agreed to explore settlement further before this date.

Would anything be gained, Mr. Feinstein, do you think, if you had some time to do that now?

MR. FEINSTEIN: Well, I certainly have no objection to an attempt being made.

We have a proposal to make, and if it's acceptable, we'll make it.

JUDGE WEIL: Very well.

We'll go off the record, and I will absent myself, and you gentlemen can discuss it.

Or do you need the Union's Counsel present?

MR. BLUMBERG: I believe I should, Your Honor.

I could talk and listen and -- before I could make a decision.

I do have a leader, a Secretary-Treasurer,

whom I would have to report to, because the attorney works directly for the District Counsel.

JUDGE WEIL: Why don't we go off the record?

Why don't Mr. Feinstein and Mr. Edelman discuss this matter?

It might be something.

Off the record.

(Discussion off the record.)

JUDGE WEIL: The hearing will be in order.

I see we have been joined by another Counsel.

MR. FEINSTEIN: Mr. Dennis?

JUDGE WEIL: State your appearance.

MR. DENNIS: Yes, sir.

My name is Michael Dennis. 600 Old Country Road, Garden City, New York, and I'm the attorney for District Council No. 9.

JUDGE WEIL: Very well.

I take it that your conference has come to naught?

MR. DENNIS: That's true, Judge.

JUDGE WEIL: That being the case, if anyone feels that his or anyone else's position has changed during the course of the proceeding, and would like to

discuss settlement further, let me know and I'll give you whatever time is required.

In the meantine, let's go forward.

MR. FEINSTEIN: Judge, if I may say, some records I have subpoenaed from the Board of Education were delivered, and I'd just like it known these are the records delivered, pursuant to subpoena.

JUDGE WEIL: All right.

Will you proceed, Mr. Edelman?

MR. EDELMAN: Your Honor, as the General Counsel's first witness, I would like to call Mr. Dennis Blumberg.

Whereupon,

DENNIS BLUMBERG

called as a witness, was duly sworn and testified as follows:

JUDGE WEIL: Be seated.

State your name and address.

THE WITNESS: My name is Dennis Blumberg. I'm a business representative, District Council No. 9, 69 West 14th Street, New York City.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Blumberg, are you employed by District Council 9?

A Yes.

Q Your position with the Council?

A I'm a business representative.

Q How long have you been a business representative?

A Four years this June.

Q Do you have any particular territory over which your jurisdiction extends?

A Yes.

It's the western part of Queens, of the area which I handle.

Q Prior to your being a business representative, were you in any other way affiliated with District Council 9?

A Yes.

I'm a member of the Brotherhood for twenty-two years.

I was a Recording Secretary of Local Union 121, Long Island City, New York.

Q I take it Local 121 is connected with District Council 9?

A It's an affiliated union.

Q Were you aware as an official of the Union, whether or not at any time during the 1960s, Mr. Prote had a contract with District Council 9, covering painters?

A Yes, I was aware of it.

MR. FEINSTEIN: Judge, just for the

record, I note in a lot of the correspondence where they refer to, it's Mr. Prote.

It's the Prote Contracting, and the principal is Mr. Demetriades.

MR. EDELMAN: That is correct, Your Honor.

The employees, and evidently the Union delegates, have always referred to Mr. Demetriades as Mr. Prote.

It would be difficult at this stage of the game, frankly, to change their habit.

If we can have the understanding that all references to Mr. Prote are -- refer instead to Mr. Demetriades, unless otherwise stated, I would -- appreciation would be shown.

MR. FEINSTEIN: I have no objection, Judge, as long as we understand that Mr. Prote means Mr. Demetriades, and Prote Contracting is separate and distinct from Mr. Prote.

JUDGE WEIL: Very well.

MR. FEINSTEIN: Okay.

Q (By Mr. Edelman) During the 1960s, did District Council 9 have a collective bargaining agreement with Prote Contracting Corporation?

A Yes, they did.

Q Is it a fact that that contract, the last contract

that the Union had, expired sometime in 1968?

A Yes, it is.

Q After the contract expired in 1968, was a subsequent contract negotiated and entered into?

A No, it was not.

Q Do you know why it was not entered into and negotiated for?

A I looked in the files of the District Council, when I become a business representative, and I saw a letter there from Prote Contracting, stating they were no longer in the painting business.

MR. FEINSTEIN: Judge, I object to all that he's seen, unless the letter is in.

JUDGE WEIL: Sustained.

MR. EDELMAN: I'd like to have the document marked Exhibit, General Counsel's Exhibit 2.

(General Counsel's Exhibit 2 was received and marked for identification of this date.)

Q (By Mr. Edelman) I show you General Counsel's Exhibit 2 for identification, and ask you if you have ever seen that letter before?

A Yes, I have.

Q Can you tell me where did you see that letter?

A In the file of District Council 9.

Q That is a letter from who to who?

A From --

It's to the Painters, District Council 9, 227 West 17th Street, New York City, and it's from Prote Contracting Corporation.

The name which I cannot read.

Q All right.

MR. EDELMAN: I'll show this at this time to Counsel for Respondent.

Perhaps you can show it to Mr. Prote, and we can get a stipulation as to its authenticity.

MR. FEINSTEIN: Well, I'll concede, Your Honor, that Mr. Demetriades signed this, but I'll object to it going into evidence.

MR. DENNIS: May I see that?

MR. EDELMAN: Of course.

JUDGE WEIL: Are you offering it?

MR. EDELMAN: I am, Your Honor.

MR. DENNIS: Thank you, Mr. Edelman.

JUDGE WEIL: What's the basis of your objection, Mr. Feinstein?

MR. FEINSTEIN: It has no relationship to the charges herein, Judge.

JUDGE WEIL: How is it relevant, Counsel?

MR. EDELMAN: Your Honor, of course we don't expect that a violation be predicated on the

letter, but we feel that as background material, it established a relationship which terminated, and we expect to show there were subsequent attempts to re-establish the relationship, which led up to the present attempt, which led up to the present charge.

JUDGE WEIL: Is it --

MR. DENNIS: May I be heard, Your Honor?

JUDGE WEIL: Yes.

MR. DENNIS: In supplement of Mr. Edelman's statement, we support its offer in evidence, subject to connection, at the very least.

It relates to the subsequent material.

MR. FEINSTEIN: Judge, the letter is from 1968, which is six years ago.

It, in effect, says that the contractor doesn't want to rejoin the Union, and he's under no obligation to join a union, and I find no relevance here at all to the charges in issue in this case.

MR. DENNIS: May it please the Court, if I may, Mr. Edelman --

MR. EDELMAN: Yes.

MR. DENNIS: This letter relates to a course of conduct of this Employer.

He has had a history with the Union, as a signed contractor, between 1969 and 1968.

He sent that letter in 1968, making certain declarations of his policies, which are relevant to this proceeding.

JUDGE WEIL: I'll reject it until the connecting factors appear, Counselor.

MR. DENNIS: All right.

I was going to suggest, respectfully, that it be admitted subject to connection.

If you find no connection, then strike it.

JUDGE WEIL: The same thing, in the opposite direction.

You may offer it when you feel the connection has been established.

MR. DENNIS: Okay.

(Whereupon, the above referred to was rejected as General Counsel Exhibit 2 in evidence.)

Q (By Mr. Edelman) During your years as a business representative, which I take it would be from 1970 to date --

A Yes.

Q (Continuing) -- did Prote have a collective bargaining agreement with District Council 9?

A Not a true collective bargaining agreement.

In 1972, he signed a letter of memorandum, with the District Council, for a period, I believe, of nine

months.

Q Well, before we get to that, did there come a time prior to this memorandum that you talk about, where you spoke with or contacted Mr. Prote, or his employees?

A Yes.

At P. S. 85, in the summer of '72, I was on the school --

MR. FEINSTEIN: Judge, again I'm going to object.

In 1972, employees at P. S. 85 have nothing to do with the issues in this case.

We're talking about employees who were discharged in 1973, '74, and I don't see why this past history has to be gone into.

MR. EDELMAN: Your Honor, if I may state a point, it could be that over the years the Respondent has exhibited anti-union animous --

JUDGE JUDGE WEIL: If you're offering it for that purpose, I'll receive it.

You are, I take it?

MR. EDELMAN: I am.

Actually, my whole line of questions into background is to establish the Employer's anti-union position over the years, concluding with the instant

discharge of the employees.

JUDGE WEIL: Okay.

MR. EDELMAN: Would the reporter read back my last question, please?

(Whereupon, the requested question was read back by the reporter.)

Q (By Mr. Edelman) You can continue.

A I found Prote Contracting doing painting work at P. S. 85, in Astoria, Queens.

I went in to talk to the men who were on the job, in regards to Section 220 of the Prevailing Wage Law of the State of New York.

The men had told me, and they signed affidavits --

MR. FEINSTEIN: Objection to what the men said.

A (Continuing) -- and signed affidavits --

MR. FEINSTEIN: Excuse me, sir.

Objection to what the men told him.

JUDGE WEIL: Don't tell us what the men told you.

What did you do?

THE WITNESS: I went in to check on the scale of wages that the men were receiving.

They explained to me that --

MR. FEINSTEIN: Objection, Your Honor.

MR. EDELMAN: I'm going to object, Your Honor, on this ground.

We're not introducing this evidence to show the truth of the statements that the men may have said; only to show that such statements were made, and based on such statements being made, the Union took certain actions, and it's relevant in that regard.

He certainly can narrate a conversation that took place, and then explain how the conversation led to certain actions being taken.

JUDGE WEIL: I'll take evidence on the actions he took.

I'll sustain the objection.

Q You spoke to employees, is that correct?

A Right.

Q As a result of your conversation with employees, you had a conversation with Mr. Prote?

A I did.

Q Can you tell me your conversation with Mr. Prote?

A I asked Mr. Prote whether he would be interested in coming down and signing an agreement with the District Counsel.

Q Did you explain to him in any connection, why he should be signing a contract with District Council 9?

A Because the men on the job were not receiving

the prevailing wage of --

MR. FEINSTEIN: Objection, Your Honor.

That's a conclusion on the part of this witness.

MR. EDELMAN: Your Honor, it's not a conclusion.

This is a statement that he had and a conversation that he had with Mr. Prote.

JUDGE WEIL: Is this what you said to Mr. Prote?

THE WITNESS: Beg pardon?

JUDGE WEIL: This is what you said to Mr. Prote?

THE WITNESS: Yes, I did.

JUDGE WEIL: Tell us what that conversation was.

Don't tell us about your reasons.

THE WITNESS: I explained to him that the men were not receiving prevailing wages upon the job, which is a violation of Section 220 of the New York State Labor Law.

We maintain, District Council maintains the prevailing wage in the City of New York for painters.

MR. FEINSTEIN: The witness is not answering the question.

The question was, what was his conversation with Mr. Prote.

MR. EDELMAN: Your Honor, it's my question, and I believe that I am the attorney that has a right to decide whether he's answering my question.

MR. DENNIS: Respectfully, if I may, Your Honor, I'm going to refrain from interferring.

I'm sure the parties here are aware that we don't have a jury, we have a Judge, and the Judge is perfectly capable of disseminating hearsay or any irrelevant matter, and what this witness is testifying to is what he said and what he did with regard to Prote, and why he did it.

I'm sure the Court here can discard anything which it finds irrelevant or inadmissible, but at least we can go ahead with this proceeding.

MR. FEINSTEIN: Well, Your Honor --

JUDGE WEIL: We'll go ahead with the proceeding, but I just want to hear from this witness what was said in this conversation with Mr. Prote, and I assume this is what you're reporting, is it not?

THE WITNESS: Well, I'm trying to explain myself, Your Honor.

JUDGE WEIL: Don't worry about explaining yourself.

Tell us what was said.

THE WITNESS: The conversation?

JUDGE WEIL: That's what we want.

THE WITNESS: I asked him would he be interested in coming in to the Union.

He said to me when you get all of the other contractors doing Board of Education work, all the other painting contractors, I will come down and sign an agreement with District Council 9.

Q Well, as a result of your conversation with Mr. Prote, did you enter into or did he enter into any kind of an agreement or memorandum with the Union?

A Yes, he did.

He entered into an agreement with the Secretary-Treasurer, then Frank Schoenfeld, a letter of memorandum.

Q What was the sum and substance of the memorandum?

A The memorandum --

MR. FEINSTEIN: Judge, rather than the sum and substance, I'd like to see the memorandum.

MR. EDELMAN: I'll introduce it.

JUDGE WEIL: If you have it, let's have it.

MR. EDELMAN: I do.

Mark that General Counsel's Exhibit No. 3 for identification, please?

(General Counsel's Exhibit 3 was received and marked for identification, of this date.)

Q (By Mr. Edelman) You spoke about a memorandum being entered into.

I ask you to look at G. C. 3 for identification, and tell me, is that the document that you speak of?

A Yes, it is.

Q Was that entered into as a result of your conversation with Mr. Prote?

A Yes, it was.

Q During your conversation with Mr. Prote, did the subject of prevailing wages come up?

A Yes, it did.

Q What did he say to you, and what did you say to him, in connection with prevailing wages?

A I told him that I have affidavits from the men that they were receiving $40.00 a day as painters on that job.

Q Now, so that the record will be informed, can you tell me what is prevailing wages in the painting industry, in the City of New York?

A At this particular time, with fringe benefits, to a non-union man, it is $8.96 an hour, for a seven hour day.

Q Now, what about a union man, how --

What is the prevailing wage to a Union man?

A A Union man today, his prevailing wage is 7.35 an hour, 16% of that the employer pays to the Union Insurance Funds for his hospitalization, dental, glasses, and $3.00 a day annuity, which is put into a private account for the employee.

Q If these are added up, the Union rate of pay and the benefits, and the non-union rate of pay, without the benefits, what would be the sum total of each?

A 8.96.

Q For each?

A For each.

Q Is there any requirement that prevailing wages be paid in the New York City -- in the New York City law?

A Yes.

MR. FEINSTEIN: Your Honor, the witness is not an expert on the law, and I'll object to that question.

MR. DENNIS: May it please, Your Honor, -- Go ahead, I'm sorry.

JUDGE WEIL: Mr. Blumberg, you said at this time.

By this time, do you mean at the time of the conversation, or at the present time?

THE WITNESS: No.

The present wage is 8.96.

At this time, it was a little bit less. We have had increases.

Q There was always a prevailing wage, right?

A Always.

Q Is it required that the painting contractors who were employed by the City of New York, pay the prevailing wage?

A It is stipulated in the Board of Education contract, that any painting contractor signs in New York City, he is to pay the prevailing wage rate of painters in New York City.

As per Section 220 of the New York State Labor Lawn.

Q Are you familiar with Mr. Prote's operations, or reasonably familiar with them?

A Yes.

Q Do you have any knowledge for whom Mr. Prote performs his painting services?

A As far as I know, Board of Education, City of New York.

Q Would that be exclusively, as far as you know?

A That's the only place I've ever come in contact with him.

Q Very well.

MR. EDELMAN: I offer the memorandum of understanding into evidence.

I show it to Counsel for the Respondent.

MR. FEINSTEIN: I have no objection, Your Honor.

JUDGE WEIL: It's received.

(Whereupon, the above referred to was received and marked General Counsel's Exhibit 3 in evidence.)

Q (By Mr. Edelman) I direct your attention to the period of time during the fall of 1973, and ask, during this period, did you have any information that Mr. Prote was engaged in painting contracting, using painters?

A Yes.

In the fall of '73, I was on the -- we got a call in the Union that there were painters working on P. S. 165, in Flushing, and that they would like to know who's doing the job.

I went over there, talked with the men on the job, and found out that it was Prote Contracting.

Q When you say, the men on the job, did you speak to painters?

A Yes, I did.

Q You had conversations with these painters?

A Yes, I did.

Q They told you that Prote was doing the job?
A Yes, they did.
Q As a result of this conversation, did you take any action, or have any contact with anybody?
A At the time, I don't believe I did.
Q Pardon?
A At that same day, I don't believe I did.
Q No.
Pursuant to this conversation, at any time thereafter.
A Yes, I did.
At a later date, we put pickets upon the job, and myself and another business representative from that area went in on the job and talked to two men that were in one of the lower classrooms, on the lower floor.
Q Are these employees that you spoke to?
A Yes, they were.
Q How long after your initial conversation at 165, did you place pickets on the job site?
A I had them prior to that.
Q Did there come a time shortly after your conversation with any of the employees at 165, when you spoke to Mr. Prote?
A Yes, we did.

I took the Secretary-Treasurer of the District Council, Jimmy Bishop, over to the school one morning --

Q This is 165?

A Yes.

(Continuing) -- to talk with the men.

And while we were there, Mr. Prote was in the school, in the principal's office, and he came down and talked to us.

Q Can you tell me about the conversation that you had with Mr. Prote?

A The conversation was, again, about wishing to come into the Union.

He had discussed it with the Secretary-Treasurer, and again a statement was made, if we get the other contractors to come along, he would agree to come into the Union.

It was left at that.

Q Between -- When did this conversation take place, by the way, with Mr. Prote, if you can just tie a month on it?

A I believe it was December.

I couldn't --

I know it was cold.

Q All right.

Between this time and January 18th, did you have

any occasion to visit any schools and talk to any of the Prote employees?

A Oh, yes.

I visited Newton High School, in Elmhurst, Queens, which is in my district, on numerous occasions.

Q Was any work being performed by Prote Contracting, at that time?

A Yes.

Q Did you have occasion to speak to any employees performing such work?

A Yes, I did.

Q Without going into each and every conversation, can you give me the sum and substance of your conversations?

A I discussed with them about coming into the Union, would they like to join the Union, how much they were getting in wages, what the Union had to offer them in supplementary benefits.

The normal procedure that I follow.

Q What was your response, as a result of these discussions with employees?

A The men, at that time, seemed that they might think about it.

Q In what way did --

What did they say, if anything, to lead you to conclude that they might think about it?

MR. FEINSTEIN: I'll object to what the men said, Your Honor.

A They told me --

MR. FEINSTEIN: Wait.

THE WITNESS: I'm sorry.

JUDGE WEIL: At this stage of the record, I think the objection is well taken.

We had some unidentified men.

Q (By Mr. Edelman) Can you identify the employees?

Are any of the employees that you spoke to, in this room?

A Yes, they are.

Q Can you point them out?

A Almost everyone of them sitting there.

MR. EDELMAN: That would be the 8(3)s, Your Honor.

The witness testified he spoke to the employees sitting in the back of the Courtroom.

I think Mr. Prote would concede that some, if not all, were painting at Newtown High School, and those are the employees that he had these conversations with.

JUDGE WEIL: All right, go ahead now.

Give us a sufficient background of -- to identify these conversations, and I'll take them.

Q These conversations occurred during what period of time?

A During working hours.

Q During the Prote working hours?

A Yes.

Q From what month to what month?

A I would say from December to January.

Q January 18th?

A 18th.

Q All right.

From the beginning of December or the middle of December, or the end of December?

How would you classify it?

A I really couldn't put a time on it, because I go to so many schools, you know, it's --

Q Can you tell me about how many discussions that you had with these employees?

A Well, I and another special organizer, had more than two or three.

Q All right.

You've just given me the sum and substance of what you've told them.

Can you give me the sum and substance of what they told you during these three meetings that you had,

or so?

MR. FEINSTEIN: Again, I'll object, Your Honor.

It's hearsay as to what somebody told him.

The witnesses are here and they're going to be called to testify. They can testify to that themselves.

JUDGE WEIL: That's right.

He can, too.

Overruled.

But I will ask you to identify who said what, to the extent that you can.

THE WITNESS: Excuse me, I didn't understand the question.

You mean individual men?

JUDGE WEIL: Yes.

Which of them said what to you, on what occasion.

Do you recall anything of that, or do you just have a general --

THE WITNESS: I talked to them as a group.

JUDGE WEIL: You talked to them altogether as a group?

THE WITNESS: Yes.

They were, you know, standing around, and

I talked to them as a group.

JUDGE WEIL: You don't recall which members of the group made certain statements?

THE WITNESS: Not at that time.

Not at the time of December.

JUDGE WEIL: I'll take the group discussion then.

Tell us what was said, what your recollection is.

THE WITNESS: I --

MR. FEINSTEIN: Before he testifies, could I ask one or two questions on voir dire on this?

JUDGE WEIL: Sure.

Q (By Mr. Feinstein) Mr. Blumberg, do you speak Spanish?

A No, I do not.

Q Do these men speak English?

A Some of them do.

Q Some of them don't, is that correct?

A Yes.

Q Was there anybody there to interpret from Spanish to English, and from English to Spanish?

A Yes, the foreman.

Q The foreman?

A Yes.

Q He interpreted for you?

A Well, he discussed with the men back and forth, as I proceeded to talk to them.

Q So, when these men said something, in Spanish, you didn't understand it, until somebody interpreted for you, is that correct?

A Right.

MR. FEINSTEIN: Based on that along, I'm going to object to this conversation.

JUDGE WEIL: Was the conversation --

Were there statements directed to you largely in Spanish?

THE WITNESS: No.

They would talk to the foreman, and the foreman in turn would ask me a question and I would answer it.

JUDGE WEIL: So, you had a conversation with the foreman really?

They didn't say anything to you in English?

THE WITNESS: At this time, yes.

MR. EDELMAN: I'll withdraw the question and rephrase it.

Q (By Mr. Edelman) Tell me about your conversation with the foreman, the sum and substance of the conversations you had with the foreman.

JUDGE WEIL: Do you know who this foreman is?

THE WITNESS: Yes.

Alphonso Castro.

JUDGE WEIL: Is he present?

Is he in the room?

MR. EDELMAN: I don't see him, Your Honor.

THE WITNESS: No, I don't see him.

JUDGE WEIL: Tell us about your conversations with him.

Q Was Castro present on each of these occasions that you spoke to the individuals at Newtown High School?

A All occasions?

Q All occasions.

A Yes.

Q He was present during the entire conversation?

A Yes.

Q Did you speak to Mr. Castro, or did you speak to the employees through Mr. Castro?

A In December, yes.

Q In December?

A Yes.

Q All right.

Can you tell me the sum and substance of your

conversation that you had with the employees through Mr. Castro, as interpreter?

A In reference to coming into the Union, our benefits and prevailing wages.

Q What did you say and what did he say to you?

A I told him we would take them in the Union, we would give them a Union book, we would see to it that their wages were paid, they would be covered by hospitalization, dental, eye glasses, vacation, and annuity monies.

Q And Mr. Castro spoke in Spanish to the employees?

A Right.

Q He had a conversation with them?

A Yes.

Q Then he spoke to you?

A Yes, he did.

Q What did he say to you?

A He says, come back in a week or so, two weeks, and we'll discuss it with you again.

Q All right.

Did you come back in a week or so, or two weeks, and discuss it with the employees again?

A I came back on January 18th of 1974.

Q All right.

What time did you arrive at Newtown High School

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on that day?

A Approximately 10:30 or 11:00 o'clock in the morning.

Q Were you accompanied by anybody?

A I was accompanied by Brother Frank Jaume, special organizer of District Council 9.

Brother Eddie Topp, special organizer, District Council 9.

Brother Dave Barrish, special organizer, District Council 9.

Q When you went into Newtown High School, where did you go, what did you do?

A I went to the custodian, Mr. McCarthy, and asked him permission to go in and talk to the painters.

He said, by all means, they're down the hall.

Q What floor was this on?

A First floor.

Q What did you do then?

A I went down with Brother Jaume, who speaks Spanish, and went in and talked to the men while they were working in the printing room of that building.

Q The printing room, is this a classroom?

A Yes.

It's a large classroom.

Q Who was present when you spoke to these employees?

A Five or six of the employees were in the room at the time.

Q Can you identify any of them being present here?

A Yes. I can identify them. Most of them.

Not by their name, maybe not by their name, but by their face. Because they had painters' hats on, they had painters' overalls, and -- by the name.

Q Can you point out those individuals that were present on the 18th of January, in Newtown High School?

A Yes.

That fellow there, that fellow there.

MR. EDELMAN: Would you stand up as you're pointed out and state your name on the record?

THE WITNESS: In the red shirt.

JUDGE WEIL: What's your name?

A VOICE: Speak in Spanish.

MR. EDELMAN: His name is set forth, Your Honor, in the Complaint.

I shall spell it for you.

JUDGE WEIL: P-A-N-T-Z-O-S?

MR. EDELMAN: Euripidis.

Q (By Mr. Edelman) Anybody else you recall seeing on that day?

A Yes. The one next to him and the one next to him.

MR. EDELMAN: Would you gentlemen stand up?

Your name?

Jose Gonzales Otero and Insua, Ramon Insua.

Q Any others, that you can recall?

A Oh, I recognize them.

They weren't in that particular room. They were in the room across the street -- across the hall, excuse me.

Q Was Alphonse -- Alphonso Castro present at this time?

A Yes, he was.

Q Was he with these employees?

A Yes, he was.

Q Did you have a conversation with the employees?

A Yes, I did.

Q Was Castro present at the time?

A Yes, he was.

Q Was your conversation directly with the employees, or was it through an interpreter?

A It was through Brother Frank Jaume that I had, and through Alphonso, and in English.

Q All right.

One of the employees spoke English?

A I believe one of them did.

Q Can you tell me as closely as you can recall, what they said to you and what you said to them?

A Again, would they like to come in and join the Union, we have the benefits to offer them, the prevailing wage of the State of New York, and everything else that I had said prior to them.

Q Did you receive any reply, either through Jaume, acting as interpreter, through Alphonso, acting as interpreter, or any employees speaking English?

A Both through Alphonso and Jaume, that they were interested in joining the Union.

Q During this discussion, did the subject of authorization cards come up?

A Yes, it did.

Q Can you tell me exactly what, if anything, you said in this connection?

A I told them if they would sign an authorization card, with the Union, we would represent them for Prote Contracting Company.

Q Was any action taken in connection with authorization cards at that time?

A Not right at that moment.

Q Now, did there come a time when Mr. Prote entered the building?

A Mr. Prote entered the building at approximately 12:00 o'clock, with the payroll.

It happened to be a Friday. He was paying the

men, so that's how I -- that's how I saw Mr. Prote.

Q What were you doing at the time you first observed Mr. Prote enter the room?

A I was discussing with the men, the availability of coming into the Union.

Q Then you saw Mr. Prote arrive?

A Yes.

Q What, if anything, did you do at that point in time?

A Walked up and shook his hand, and said hello, Mr. Prote, how are you.

He says hello, Dennis.

Q Where did this hand shaking and introduction take place?

A Right in the hallway, in front of the classroom.

Q You were in the hallway, in front of the classroom, and the entranceway separated you?

A Yes.

A double door, which was open.

Q Where were the employees, and where was Alphonso Castro at this time?

A In the classroom.

They were just getting ready to eat.

Q About how far would you say were you and Mr. Prote, from the employees?

A Ten to fifteen feet.

Q There was no obstruction separating your line of vision?

A None whatsoever.

Q Did you have a conversation with Mr. Prote, at this point in time?

A Yes, I did.

Q Can you tell me what you said to him and what he said to you?

A Basically, the same discussion that, would he be interested in coming down and signing an agreement.

Q That's what you said to him?

A Yes.

Q What did he say to you, if anything?

A He said again, when the other contractors doing work for the Board of Education, come down and sign, I will sign.

Q Anything else after that?

A I explained to him then that the men were willing to sign cards to come into the Union, and he stated to me I have no more work.

I says I beg to differ with you, I know the bids that you have received from the Board of Education, you have more work. I says they are willing to come in the Union.

Mr. Prote said to me, I have no more work. I'll fire them.

Q Any further conversation with Mr. Prote, at this point?

A No.

I told him thank you, and I left.

Q Okay.

Did you meet with the employees on January 18th, after the conversation that you had with Mr. Prote?

A Yes, I did.

I went out to my car to look for the authorization cards in my trunk, and I couldn't find -- I didn't have the cards in the trunk.

We got into the car, the four of us, Brother Jaume, Brother Topp, Brother Barrish and myself, went into District Council 9, in New York City, got the cards out of the office, and went back out on the job, and we arrived there approximately a quarter to three, three o'clock.

Q What time do the men leave?

A The men were due to quit at 3:30.

Q Did they quit at 3:30?

A Yes, they did.

Q Did you have any conversation with any of these individuals, after work?

A Yes, I did.

Q Where did this conversation take place?

A It took place in a bar and restaurant on Corona Avenue.

Q Approximately how many employees were present?

A I believe there were nine men. Eight or nine men.

Q Were these the employees that you saw at Newtown High School?

A Yes, they were.

Q Were the employees that you identified present?

A Yes, they were.

Q Were others present, as well?

A Yes, they were.

Q Was any other Union individual present?

A Brother Topp.

MR. FEINSTEIN: Wait, wait.

You said, were others present as well.

Do you mean --

MR. EDELMAN: Other employees.

MR. FEINSTEIN: I'd like an identification.

Who else was present, other than the ones you identified?

THE WITNESS: I would say all of them were present.

I made a reference as to their names.

I don't know them by names.

MR. EDELMAN: Do you see any other employees here that were present in the bar on the 18th of January?

THE WITNESS: Yes.

All of them.

MR. FEINSTEIN: Did he say, all of them?

MR. EDELMAN: That's what he said.

Q (By Mr. Edelman) Any other Union representatives present, aside from yourself?

A Brother Topp, Brother Frank Jaume, and Brother David Barrish.

Q Can you tell me what, if anything, was said or done in connection with this meeting?

A Again, we discussed coming into the Union.

I had the authorization cards, and I asked them to give me their name so I could print it on the bottom of the card to make sure each man signed the proper card.

Q All right.

Were authorization cards signed at this meeting?

A Yes, they were.

Q By how many employees?

A I --

Q If you can recall.

A Seven or eight.

I can't, you know, I can't --

Q To your best recollection, it was seven or eight?

A Right, it was.

It was quite a while back.

Q Did there come a time when you filed a petition for an election in connection with the painters employed by Prote?

A Yes.

Q Would that be January 23rd that you filed that petition?

A Yes, I did.

MR. EDELMAN: I have no more questions of the witness at this time, Your Honor, and I would move that the letter which was rejected subject to connection, be introduced into evidence, to establish the broad picture of the bargaining history between the parties.

We feel that the bargaining relationship ended at that time, and we should have documentary evidence to indicate how and why it ended, and what bargaining history that has taken place since that time, has been testified to, but the record would be incomplete unless we had the letter in evidence.

I think it's proper.

MR. FEINSTEIN: I strenuously object,

Your Honor.

Again, the letter goes back six years.

It has absolutely no relevancy whatsoever to what Mr. Blumberg just testified to.

It just merely states in effect that Prote refuses to sign a collective bargaining agreement in 1968, when his previous bargaining agreement expired, and it is just completely irrelevant to the issues in this case.

JUDGE WEIL: Let me see the letter.

One person says -- says it just states he refuses to sign an agreement and the other says it explains it.

MR. EDELMAN: Yes.

JUDGE WEIL: I don't see where that letter carries us forward in any direction at all.

I won't accept it now.

MR. EDELMAN: Very well.

I have no further questions of the witness, Your Honor.

JUDGE WEIL: Very well.

Mr. Dennis, do you have any questions of the witness?

MR. DENNIS: No.

Other than, if I may, for a moment, go

back to the letter, if that procedure is not improper.

I'm not quite sure.

JUDGE WEIL: Go ahead.

MR. DENNIS: May I offer this, again, on behalf of the General Counsel, particularly in view of the last paragraph of this letter, and the subsequent contradiction by this Respondent.

I'm referring to the statement in the letter, "In view of the fact that I no longer employ any employees in the aforementioned classifications, and have restricted my business functions to that of general contractor, you're hereby advised that we do not intend to renew the agreement," et cetera.

Now, I believe subsequent conduct of this employer was in contradiction to that statement, and I think that is why the General Counsel wanted to offer it.

Is that correct?

MR. EDELMAN: Well, --

JUDGE WEIL: There's no evidence on the record that at the time of writing that letter, that Mr. Prote had any employees in those classifications, or that he wasn't operating solely as a general contractor.

It doesn't contradict anything, it doesn't

support anything, it doesn't have any relevance to this situation that now exists, as I see it.

So, I'll reject it.

MR. DENNIS: All right.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Blumberg, when you spoke to these employees at the schools, did you tell them whether or not, if they went into the Union, they would be classified as apprentices or journeymen?

A Journeymen.

Q Did you ask them if they ever did any painting work before Newtown High School?

A Yes, I did.

Q What did they reply?

A They said they've done painting.

Q They said they've done.

Did you investigate that in any respect?

MR. EDELMAN: Objection.

A No, I did not.

MR. EDELMAN: Objection.

JUDGE WEIL: Overruled.

Q You didn't do any investigation?

A No.

Q Are there any rules and regulations in your Union, as to what is required for membership?

MR. EDELMAN: Objection.

JUDGE WEIL: How is it relevant, Counselor?

MR. FEINSTEIN: Well, Mr. Blumberg said he went to the school and told these men they could join the Union.

I want to know if he made an exception to these men, that he doesn't make to other people.

If he took in people who were unqualified to belong to the Union.

JUDGE WEIL: What difference does it make from our standpoint?

This might be something between him and the State or between him and the Employer, but --

MR. FEINSTEIN: To show at this hearing, that these charges were brought by the Union, to harrass the contractor.

That they offered people membership in the Union, so that they could represent them, when ordinarily they would not offer these type of employees membership in the Union.

That they waived requirements specifically for these employees, which they don't do normally for other employees. Only to get representation to try and coerce the contractor to become a Union contractor.

JUDGE WEIL: If -- As I see the issue, if

the employees decided to join the Union, and the Union is prepared to accept them, for whatever reason that they want to, then certain rights ensue from that decision, and -- on both of their parts.

Now, why they make this decision is irrelevant to this proceeding.

MR. FEINSTEIN: I also want to show, Your Honor, that Mr. Blumberg just testified these people were -- were journeymen painters, when in fact, they were not qualified to be journeymen painters, and he misrepresented to the men, when he said they would get $8.96 an hour, or whatever it is, plus fringe benefits.

JUDGE WEIL: If we had an 8(a)(5) allegation -- We don't, do we?

MR. EDELMAN: No.

JUDGE WEIL: You don't propose to amend the Complaint?

MR. EDELMAN: That is correct.

JUDGE WEIL: Then I might take kindly to your suggestion, Counselor, but we don't.

MR. FEINSTEIN: All right.

Q (By Mr. Feinstein) Now, we have an Exhibit 3 in evidence.

Mr. Blumberg, did, to your knowledge, did Prote in any way violate the terms and conditions of that

agreement?

A This particular agreement?

Q Yes.

A Not to my knowledge.

Q Okay.

Now, isn't it a fact, Mr. Blumberg, that Prote, from 1969 to date, has from time to time subcontracted painting work to Union subcontractors?

A Not to my knowledge.

Other than this particular instance.

Q Now, there's no requirement that you know of, is there, sir, that contractors who do work for the Board of Education, have to be Union contractors?

A No. There is no requirement.

Q They just have to pay prevailing wages, is that correct?

A Correct.

Q It's up to the controller of the City of New York, to enforce 220 of the Labor Law, is that correct?

A Yes.

Q Now, in any of the conversations with the men, did the men at any time say to you that we were told by Mr. Demetriades, that if we join the Union, he's going to fire us?

Did any of the men ever tell you that?

A Prior to January 18th?

Q Yes.

A No.

Q Did any of the men ever tell you that Mr. Demetriades even spoke to them about whether or not they should join the Union?

A Again, prior to January 18th?

Q Yes.

A Not to my knowledge.

Q Isn't it a fact, Mr. Blumberg, that Alphonso, the foreman, did receive a Union card?

A Yes.

Q Isn't it a fact that Alphonso is still employed by Prote Contracting?

A I would presume so.

I don't know.

Q You visited two schools, 165 and Newtown High School, is that correct?

A That's correct.

Q Now, isn't --

MR. EDELMAN: Is that Newtown?

MR. FEINSTEIN: Newtown.

Q Now, isn't it --

You've been around a long time in the painting industry, isn't it a fact, sir?

A Yes.

Q Isn't it also a fact that when a painting contractor reaches substantial completion of a job, he'll lay off his employees?

A It's possible. Yes.

Q Is it possible?

It's true, it happens, isn't that correct?

A Occasionally, yes.

He takes them on his next job, normally.

Q But, doesn't it often happen, Mr. Blumberg, that these contractors who work for the Board of Education, when they reach substantial completion, if they don't have any other painting work, they'll lay these people off?

Is that correct?

They don't keep them on staff permanently.

A I'm not too familiar with it, because they're not Union contractors.

I know what Union contractors do.

Q When a Union contractor working for the Board of Education reaches substantial completion, do they lay their men off, if they have no other work?

A Occasionally.

Q Do they keep them on the payroll if they have no other work?

A No.

They bring them to another Union job.

Q But if they don't have another Union job, sir, do they lay them off?

A They would.

Q They don't keep them on staff permanently if they have no work?

A We had no guaranteed annual wage.

Q The painters don't work as carpenters or plasterers, they just work as painters, is that correct?

A Yes.

Q Now, when these employees were laid off at P. S. 165, sir, do you know the date they were laid off?

A No, I couldn't give you the exact date.

They came down the Union, but the exact date, it was a day or two after the --

Q Would it be about January 25th?

A Possibly, yes.

Q Did you ascertain whether or not Prote was finished with that job at 165, at that time?

A Yes.

Q Was he substantially complete with that work?

A No.

According to my figures, he was not complete.

Q Do you know whether or not any painters have been

back to that school since January 25th, 1974 to work on that job?

A Yes.

Q You do know that?

A Yes.

Q Have they been?

A Yes.

Q Who's been back?

A Mr. Pantzos.

I saw him on a Saturday, in the gym, in February, I believe.

Q Now, is Mr. Pantzos a painter or another trade, sir?

A He's a painter.

Q He is a painter?

You're sure of that?

A He's a floor finisher and a painter, which is the jurisdiction of the Painters' Union.

Q When he was back on that job, sir, was he a member of the Union?

A I --

MR. EDELMAN: Objection, irrelevant.

MR. FEINSTEIN: It's not irrelevant.

JUDGE WEIL: Overruled.

Q Was he a member of the Union at that time?

A I'm not sure that he was sworn in as yet.

His application was in to the Union.

Q He was hired back by Mr. Demetriades, is that correct?

A I presume he was.

Q Was he doing painting work or floor refinish work?

A He was refinishing the gym floor. The striping, painting of the lines on the gym floor, and the varnishing of the gym floor.

Q What date was that, sir?

A It was on a Saturday.

I don't have the date at my fingertips.

Q Were any other men back at 165, after January 25th?

A This was not 165.

Q I'm talking about 165.

A Excuse me, this was Newtown High School.

Q Let's get back to 165.

After January 25th, when these men were laid off at 165 --

A Yes?

Q (Continuing) -- do you know of your own knowledge, whether any men were back on that job?

A No. Not 165.

Q Not 165?

A No.

Q Did you investigate to find out, sir, if, when these men were laid off on 165, on January 25th, whether or not that job was substantially complete?

A On January 18th there were only two men on that job.

Q Those men were laid off, is that correct?

A No.

Q Eventually, on January 25th, they were laid off?

A No.

Pombo was on that job, and the foreman, James Satchell, a black fellow.

Q Okay.

But Pombo was laid off on January 25th, is that right, sir?

A I would presume so, yes.

Q On that date, was that job substantially complete?

A I can't really answer that question, because I didn't look at that school that close.

Q Is it possible?

A It's possible.

Q When were you there?

A It's possible.

Q Did you check with the Board of Education whether or not that job was substantially complete, on January 25th?

A No, I didn't.

Q Did you make any investigation whatsoever, before you filed charges here, sir?

MR. EDELMAN: Objection to the question.

JUDGE WEIL: Overruled.

MR. EDELMAN: The witness is not required to make any investigation.

JUDGE WEIL: I know he's not.

The question is, did he.

Q Before filing charges here, did you make any investigation to see the status of completion at 165, on January 25th?

A I believe I went to the Board of Education, in Queens Plaza, to look at the completion records, because they have a set of records there that show 50%, 40%, 60%, 70%.

Q After you looked at their records, did you make a conclusion in your own mind, what the status of that job was on January 25th, 1974?

A Very hard for me to determine that.

JUDGE WEIL: Why did you look at those records?

THE WITNESS: To see whether the completion was done.

JUDGE WEIL: What did you see?

THE WITNESS: I believe I saw 70% on the

95

record.

See, I look at a lot of records, and this is quite a while back.

I believe it said 70% at that time.

And on Newtown, it said 60%.

Q Now, sir, on Newtown High School, there were six men working on that job, is that correct?

A Seven, I believe.

Q Seven, with the foreman?

A Eight with the foreman.

Q Okay.

A I believe.

Q There came a time in January when some of the men were laid off, is that correct?

A Yes.

Q But not all the men were laid off, is that correct?

A To my knowledge, they were all laid off at that time.

Q In January?

A Except the foreman, I believe, on that job.

Q Isn't it a fact, sir, that Luis Castro, and Desiderio Pombo were not laid off the -- with the other men, that they worked after January on Newtown High School?

A That's possible, yes.

Q All right.

Isn't it a fact, sir, that these two men, Luis Castro and Desiderio Pombo signed those authorization cards?

A Yes.

Q Do you know how long they worked on Newtown High School, after January of 1974?

A I can't give you an exact date.

Q But they did work after they signed Union authorization cards, is that correct, sir?

A Yes, they did.

Q Do you know what work remained -- and they also worked, by the way, together with Alphonso, the foreman, and Jimmy Satchell, another foreman for Prote, is that correct?

A I did not see Jimmy Satchell on Newtown High School.

Q Did you visit the job, Newtown High School, sometime in February of 1974?

A Yes, I did.

Q Who did you see working there?

A I visited on a Saturday, to look over the completion of the job, and I went on every floor.

Q Did you find any men?

A I found Pantzos in the gym, striping the red and

black lines for the basketball courts, and varnishing the gym.

Q At that time, Pantzos had signed a Union authorization card, is that correct?

A Yes.

Q Did you go there during the week, a weekday, in February of 1974?

A I don't recall it at this time.

Q Do you know what work was left to be done in Newtown High School, after January of 1974?

A Yes.

I had a --

Q What work had to be done?

A All the varnishing of all woodwork on all floors, many, many doors, bucks, base, dados, some dados had to be done, some stairwells had to be done.

Q You're sure of this, sir?

A I believe I am.

Q Did you check the Board of Education records on this point?

A Again, I believe I did.

Yes.

Q Do you recall what the Board of Education records said, sir?

A I don't think there was a change in the percentage

with the Board of Education.

Their records are very hard to read.

Q Did you, as part of the Board of Education records, did you find any bills that were submitted by Prote Contracting Corp?

A Did I find any bills?

Q Yes.

A I have nothing to do with bills.

That's not my concern.

Q If I told you, sir, that a bill was submitted and approved --

MR. EDELMAN: Objection.

MR. FEINSTEIN: Let me finish my question.

Q That a bill was submitted on January 10th, 1974, by Prote Contracting, for work at Newtown High School, which showed that all the painting was completed, except in the basement area, would you dispute that fact, sir?

MR. EDELMAN: Objection, sir.

JUDGE WEIL: Sustained.

Q At any time, sir, did any of these men that were laid off, did they, at any time, ever tell you that in their opinion, they were laid off because they belonged to the Union?

MR. EDELMAN: Objection.

JUDGE WEIL: Sustained.

Q Did Mr. Demetriades, or anybody from Prote Contracting, ever tell you that he was going to lay off men, or he did lay off men, because of their Union sympathies?

A Did Mr. Prote?

Q Did Mr. Demetriades, or any other officer of Prote Contracting?

A To me directly?

Q Yes.

A No.

MR. FEINSTEIN: No other questions.

MR. EDELMAN: I have no redirect for the witness, Your Honor.

JUDGE WEIL: Thank you; you may step down.

(Whereupon, this witness was excused.)

MR. EDELMAN: General Counsel will call as its next witness, Mr. Topp.

Whereupon,

EDWARD TOPP

called as a witness, was duly sworn and testified as follows:

JUDGE WEIL: Be seated.

State your name and address.

THE WITNESS: Edward Topp.

Special organizer, International Brotherhood of Painters, District Counsel 9, 69 West 14th Street,

New York City.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Topp, are you employed by District Council 9?

A Yes, sir.

Q Your position with District Council 9 at the present time?

A Special organizer.

Q How long have you held this position?

A Since November 9th.

November 1st or 9th of last year, '73.

Q Were you employed by the Union prior to that time?

A Yes.

I was a business agent for three years prior to that.

Q On January 18th, were you present at Newtown High School?

A I was.

Q Were you accompanied with anybody?

A Yes.

I was there with Mr. Blumberg, Mr. Frank Jaume, and Mr. Dave Barrish.

Q Can you tell me about what time you arrived at Newtown High School?

A More or less, we were there in the morning, but

more or less about, approximately 10:30.

We entered the school, Mr. Blumberg, Mr. Jaume and myself. We went to the office of the custodian, whose name is Mr. McCarthy. We announced ourselves and asked to see the painters.

Q Did you, at any time thereafter, visit with the painters?

A We did.

Mr. McCarthy pointed down the hall, and the three of us went and we came to the room, it was a printing shop room, where we spoke to some of the employees.

Q About how many employees were present at this time?

A Well, roughly, the best of my recollection, I'd say about eight or nine.

Q Do you know an individual by the name of Alphonso Castro?

A I met the gentleman, I don't know him from before; he's the foreman.

He was out in the hall. He was carrying some of the kickers.

A kicker is a thing you stand on between two ladders.

He was going back and forth between the classroom and the other side of the hall.

Q Was Mr. Castro present at any time in this printing classroom?

A Yes, he was.

Q Was he --

Did you --

Did the other Union representatives speak to any of these employees in the printing classroom?

A We did.

Some spoke English and the majority did not, and we spoke to them through an interpreter, Frank Jaume, who speaks Spanish.

I understand a little Spanish.

Q Was Mr. Castro present during the conversation you had with the employees?

A He was.

Q Can you identify any of the employees that you spoke to; are they present here today?

A Yes. Most of the employees sitting here, I wouldn't be able to identify exactly what room they were in.

About four or five were in classroom, and two, I believe, were working across the hall in another classroom.

I couldn't really identify them that closely, but I remember seeing them and speaking to them.

Q All right.

Is it my understanding of your statement that although you could not point out which ones were in the room, four or five of the six or seven who are present today, were in the --

A I could identify the ones that were in the classroom, but I can say I wouldn't positively be able to identify the two in the other room.

Q Can you identify the ones in the classroom?

A The gentleman in the red shirt, the ones next to him, and the gentleman next to him, I remember being in the classroom, the printing room. And the next one would be, about four.

Q All right.

That would be Mr. --

Would you state your names, gentlemen?

That gentleman, too.

And --

A The gentleman sitting there, as far as I recall, and the gentleman on the end, I believe, was in the classroom, too.

MR. EDELMAN: The one standing?

THE WITNESS: On the end there.

Mr. Bombo.

MR. EDELMAN: What is your name?

That is Ismael Rial, Ramon Insua, Juan

Gonzales Otero, Euripidis Pantzos, and Ismael Rial, and Juan Pombo.

THE WITNESS: Right.

Q Can you --

A Let me make it clear, sir, that they were -- they were back and forth in the room.

I would not positively identify whether he was in this room or that one.

These four I remember being in the printing classroom.

Q Mr. Castro was present as well?

A Right.

Q The three or four Union business agents were there, is that correct?

A The special organizers.

Q Mr. Jaume was one of them?

A Right.

Q Can you tell me exactly what took place in connection with this meeting, as closely as you can recall it?

A When we were in Mr. McCarthy's office, the custodian, there was an inspector from the Board of Education, who mentioned to us that Mr. Prote will be here to pay the men, why don't we wait and speak to Mr. Prote. He generally arrives around twelve o'clock.

So, when we went in to speak to the men, it was before twelve o'clock. A little close to it.

As we were speaking to them, Mr. Prote walked down the hall. I had occasion to meet him once or twice before. We said hello to Mr. Prote, we shook hands. We began to talk to him about rejoining the Union.

Now, --

Q Well, before we leave the employees, can you tell me what the substance of your conversation was between the Union agents and Mr. Castro and the employees?

A Well, basically, we were telling him the advantage of joining the Union. That the wages would be higher, that we had a pension, we had a welfare fund, we had a -- glasses that they were supplied with. They had dental rights. That their wives were entitled to it, and anyone under 19 years of age were entitled to it. That advantage was on their side.

Q All right.

A In addition to that, I mentioned the fact that we also did tell them that the State of New York has a law which compels any employer working for the City of New York, to pay the prevailing scale, which is the painters' scale at the present time.

Q All right.

Now, can you tell me what any of the employees

said, or what Mr. Castro said, or what Mr. Jaume said the employees said?

A Well, some of them -- Some of them spoke English, but basically, they had agreed that they were going to join the Union.

MR. FEINSTEIN: Objection to what they agreed, Your Honor.

THE WITNESS: Well, they agreed because --

JUDGE WEIL: Wait.

THE WITNESS: I'm sorry.

JUDGE WEIL: I'll sustain the objection.

You can tell us what Mr. Jaume or Mr. Castro told you they said.

THE WITNESS: All right.

Mr. Castro, who spoke English, said that the men were willing to come to the Union and join it, and the interpretation of Mr. Jaume was the same, that the men were interested to come and join the Union.

JUDGE WEIL: All right.

Q Now, subsequent to this conversation with the employees, did you have any conversation with Mr. Prote?

A We did.

When Mr. Prote arrived --

Q When did he arrive?

A I would say, perhaps, it was about ten to twelve,

or a little after twelve.

I can't recall that exactly.

Q Okay.

A It was around lunch hour. The men were getting ready to eat.

I think the men were sitting around when Mr. Prote had come.

I, for myself, had spoken to Mr. Prote and tried to convince him of the advantages of --

Q When Mr. Prote came in, and you spoke with him, where were you and where were the other Union --

A Mr. Prote was in the hallway adjacent to or almost on top of the doorway, and I was standing almost parallel with the open doors.

Mr. Prote was like next to me and Dennis was there.

I tried to emphasize the fact that the advantage of being in the Union was on the Employer's side. That the Union would then do all it could to help him, you know, sustain him in trying to maintain his work. That the competition was getting so completely out of hand, that the prices they were paying, it was impossible for anybody to stay in business, which Mr. Prote agreed to.

The only thing he said, that if everybody else will come in, I will come in.

Then I -- I told him that his men were willing to

join the Union. That we had spoken to them, they wanted to come into the Union.

Well, he said in that case, I'm giving up my work and I'm going to fire them.

That, more or less, ended our conversation.

Q All right.

Now, subsequent to the conversation with Mr. Prote, did you meet with any of the employees at Prote Contracting?

A Yes, we did.

When the employees had indicated their willingness to join the Union, Dennis and I then, we went to Dennis' car to look for the pledge cards, which we generally carry, and he had discovered that he didn't have any.

So, four of us, myself, Mr. Blumberg, Jaume and Mr. Barrish, then went into the City, to the Council, on West 14th Street, we went and got the cards and returned with the pledge cards to the school, Newtown High School, and we went in and we saw some of the men at the time, in the classroom, --

I believe it was Mr. Blumberg printed some of them, so he would get the name correct, and subsequently, we decided we were going to meet in this bar and grill, whatever you call it, on Corona Avenue, and there they were again explained.

Q Did you meet with employees in the bar and grill, after work?

A Yes.

I was under the impression there was more than eight or nine.

I recall ten or eleven. I may be wrong.

We were sitting at several tables, and we were going back and forth to the bar, so it's hard to say exactly. I got the impression it was nine or ten.

But, again, Mr. Jaume, who speaks Spanish well, explained to them what exactly was the objective, what was the advantage, and one of them speaks English, I wouldn't say well, but, -- the end result was they did sign and did agree that we should -- the Painters' Union should represent them.

Q How many cards did you obtain as of this date, or as of this meeting?

A At the bar?

Q Yes.

A Roughly, the best of my recollection, I would say eight or nine.

I may be wrong.

Q Did you obtain cards from any individuals who are present in this room?

A Yes.

Q At that time?

A To the best of my ability, as far as I can recall, they were all there.

The cards were signed by eight or nine individuals, as far as I can recall.

Q All right.

You may be in error with respect to some of the --

A I may be, yes.

It's in January. January 18th is a little --

Q But you are certain that of the eight or nine cards, you obtained, at least a substantial number were signed by some of the employees here?

A All of them present here were in that barroom.

There might have been some additional ones.

MR. EDELMAN: No further questions.

JUDGE WEIL: Mr. Dennis, any questions?

MR. DENNIS: No, sir.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Topp, you said when you went to Newtown, you saw these men there.

Was that on January 18th, 1974?

A Yes.

Q You point out Mr. Pombo as being one of the painters there?

A I said I was not sure about Mr. Pombo.

Q You're not sure Mr. Pombo was there, is that correct?

A Yes.

Q Are you sure any of the other men were there?

A Yes, I believe I am.

Q Everyone was there, but you're not sure about Mr. Pombo?

A Right.

Q Was Mr. Pombo at the bar that night?

A As far as I can recall, I think he was.

Q He was.

Now, when you told Mr. Demetriades that the men wanted to join the Union, did he say to you, I have no more work?

A You mean Mr. Prote?

I'm not accustomed to that name.

Q Mr. Prote.

A What we said to him, this is how the conversation went.

We said the men are going to join the Union.

Q Who said that?

A I said it to Mr. Prote.

Q Yes?

A Right.

Q Was Mr. Blumberg there at the time?

A He was standing right alongside of me.

Mr. Prote then said to me, well, in that case, I have no more work, I'm going to lay them off.

Q But he told you he had no more work, is that correct?

A He did, right.

Q Did you ever investigate, sir, whether or not he did have any more work?

A Well, I don't see what relevance it has, but we did investigate some other things that we are led to believe that there is some subterfuge on these things.

Q I object to that answer.

Do you know of your own knowledge, sir, whether Prote Contracting has -- with his own men, has started any other painting work, after Newtown and 165 were completed?

A No, I would not know that, with my own knowledge.

However, there are other things that we do know.

Q Sir, just answer my question, if you don't mind.

A All right.

I'm answering to the best of my ability.

Q You did find Prote employees at 165, and Newtown, by your own investigation, is that right?

A Right.

Q But you found no other Prote painting jobs at any

other schools, subsequent to that, is that correct?

A May I say this?

Q Did you find any other --

A No, I did not.

Your Honor, could I just elaborate?

JUDGE WEIL: No. Just answer the question.

THE WITNESS: Okay.

MR. FEINSTEIN: No other questions.

JUDGE WEIL: Mr. Edelman?

MR. EDELMAN: No redirect, Your Honor.

JUDGE WEIL: You may step down.

(Whereupon, this witness was excused.)

JUDGE WEIL: Would this be an appropriate time to break for lunch, gentlemen?

MR. EDELMAN: May I check with the Interpreter?

The rest will be Spanish witnesses, unless Mr. Jaume gets back. I understand he's delayed.

I'd like to clear it with the Interpreter, so when we do come back, we can move right on.

JUDGE WEIL: What's to clear?

MR. EDELMAN: I want to check when he's taking his lunch.

JUDGE WEIL: Where is he?

MR. EDELMAN: On this floor.

JUDGE WEIL: Tell him I propose to come back at two o'clock.

It's now five minutes to one.

We'll break for lunch.

(Whereupon, the hearing was recessed at 12:55 o'clock P. M.)

(Whereupon, the hearing resumed at 2:00 o'clock P. M.)

JUDGE WEIL: The hearing will be in order.

MR. EDELMAN: Your Honor, General Counsel calls as its next witness, Euripidis Pantzos.

JUDGE WEIL: My understanding is these gentlement do not speak English?

MR. EDELMAN: Correct.

Mr. Pantzos does not.

Whereupon,

FRANK MONTI

called as a Spanish Interpreter, was duly sworn by Judge Weil.

JUDGE WEIL: Will you administer the oath

to the witness?

Whereupon,

EURIPIDIS PANTZOS

called as a witness, was duly sworn, through the Spanish Interpreter, Frank Monti, and testified as follows:

JUDGE WEIL: What is your name and address?

THE WITNESS: Euripidis Pantzos.

3128 42nd Street, Astoria.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Pantzos, were you ever employed by Prote Contracting?

A Yes.

Q Would it be fair to say that you began your employment at Prote sometime around June of 1973?

A Yes.

Q Who hired you to work for Prote?

A A friend of mine told me that Prote needed somebody.

He called Prote, and Prote said take him on the job.

Q Did you speak to Mr. Prote personally, in connection with your hire?

A Yes.

In the afternoon -- In the afternoon or in midday, Mr. Prote came, and he took me on working there as a

carpenter's helper.

Q This was in June?

A May, June.

Q Did there come a time when you began to do other work for Mr. Prote?

A I worked a week or two with the carpenters.

Afterwards, Mr. Prote put me to work with the painters, and also helping the painters and painting, as well.

Q What work did you do besides painting, if anything?

A For two weeks or a month, I'm not too sure, I started scraping floors, painting lines, and putting varnish.

Q What was your rate of pay for doing this work?

A I started with 130, around there, and I was raised to 145.

Q Is this per week?

A By week.

Q Your hours, when did you begin work each day, and when did you end work each day?

A I started at eight, and finished at 3:30, with a half an hour to eat.

Q Where did you perform this work for Mr. Prote?

A In schools.

Q Were these schools in New York City?

A Yes.

Q Do you know if these were New York City schools or private schools?

A Public schools.

Q Was there anybody on the job that told you what to do and who to work for, and -- or who to work with?

A First the carpenter told me what to do.

Then when I was with the painters, it was either Mr. Prote or the foreman that they had there, Jimmy.

Jimmy.

Q Jimmy, is that Jimmy Satchell?

A Yes.

Q Did you know an Alphonso?

A At first, no.

Q Did you know him later on?

A Yes.

Q Did he, from time to time, tell you what to do?

A No.

But the rest of the time, only Mr. Prote told me what to do.

Q On January 18th, were you working at Newtown High School?

A Yes.

Q On January 18th, do you recall a conversation with any of these men from the Union?

A Yes.

Q Can you tell me who from the Union spoke to you?

A Mr. Dennis and Mr. Topp.

Mr. Frank Jaume.

Q Is that Frank Jaume from the Union?

A Yes.

Frankie started explaining to us the things that the Union has.

They have doctors. They have doctors for a man's wife or children. Glasses. Doctors for the teeth. Many things.

Q All right.

Were there other employees present when Frankie explained this?

A Yes.

Q Can you tell me who was present with you?

A Rial. Ramon. Pepe.

MR. EDELMAN: Let the record indicate that would be Rial Insua, Ramon Insua, Ismael Rial, and Juan Pepe Gonzales.

THE WITNESS: There are more that aren't here.

Q Do you know their names?

A Pombo.

Q Desiderio Pombo?

A Yes.

Luis Castro. Foreman. Alphonso.

Q Alphonso Castro?

A Castro.

Q Alphonso was with you?

A Yes.

Q Where were you at this time the Union spoke to you?

A I was on the first floor, and all of us went to eat lunch.

All we people have a room to eat lunch in.

Q Was this a classroom?

A Yes.

Q Now, after the Union men spoke to you, did the employees say anything to Frankie?

A Well, Alphonso spoke mostly, and one man, Felipe, who was speaking English.

I was told this in the afternoon. That in the afternoon, -- In the afternoon we had to go someplace to sign a paper that the man from the Union had.

Q Did -- Was that man that spoke English, was that Felipe Beiro?

A Alphonso --

Q Castro?

A Castro.

Q Did they both speak English to the Union?

A Yes.

They spoke English and Spanish.

Frankie spoke Spanish.

Q Did you and the other Spanish speaking employees speak to either Alphonso or Felipe?

A We spoke with Alphonso, and he told us that the Union was a good thing for all of us to join.

Q What did you say, if anything, when he said this?

A I saw that this was good for me, because I had a family and Frankie explained it to us.

Q Did you tell anybody this, what you were thinging, or what you had seen?

A Well, --

Q Did you tell Frankie or did you tell Alphonso how you felt about the Union?

MR. FEINSTEIN: Your Honor, excuse me, Judge, I would like to make a motion to exclude all the other witnesses from the Courtroom while this testimony is being given.

JUDGE WEIL: I won't exclude them, for two reasons.

One, I don't think your motion is timely.

MR. FEINSTEIN: I agree with that.

JUDGE WEIL: In any event, the Board will not permit us to exclude the alleged discriminatees, and as I understand it, they are all alleged discriminatees.

MR. EDELMAN: Parties or 8(3)s.

Let me withdraw that question and ask another one.

Q Did either you or any of the other employees, say anything to Frank Jaume, about the Union?

A We asked him all the benefits that the Union had.

Q Okay.

Did the subject of joining the Union come up during this discussion?

A Explain to me more.

Q Did the subject of signing a Union card come up during this meeting?

A We signed a card in the afternoon.

Q Was this discussed in the morning?

A We talked about this at midday, and in the afternoon, they explained to us again, and we signed.

Q Was this discussed when Mr. Jaume was talking to you?

A That's it?

Q Yes.

A Could you explain it to me?

Q When Mr. Jaume was present with the other Union individuals, did he bring up the subject of authorization cards?

A He explained everything that the Union had to us, and told us by signing this card we could join the Union.

Q Okay.

When he said this, did any of the employees say anything?

A Alphonso Castro said that the best thing would be for all of us to join the Union.

Whoever wants to sign, should sign.

And he signed first.

Q Did -- When Alphonso said this, did you say anything, or did any of the other employees say anything?

A No.

Because they explained all the things to us, and we saw that this was a good thing, more benefits with the Union.

Q Did you tell the Union this, or did you keep this thought to yourself?

A No.

The last time I didn't say anything, because they explained it all to us before, the best things.

Q During your conversation with the Union men, did Mr. Prote enter the building?

A Yes.

At noon, at the hour we were talking to the Union men, Mr. Prote entered, and the Union men went by the door and talked to him.

Q All right.

Did you hear what was said?

A No.

Q Now, I direct your attention to that day that Mr. Prote visited the school, and ask if you met with the Union people in a bar, after work?

A Explain it to me.

Q Did you meet the Union people, Mr. Jaume and Mr. Blumberg and Mr. Topp, after you left work that day?

A Yes.

Q Where did you meet them?

A In a bar.

Q All right.

What did you do there?

A They explained to us again the benefits of the Union, and we signed the cards.

Q Who was present, which employees were there?

A Rial.

Q Ismael Rial.

A Pepe.

Q Juan Pepe Gonzales.

A The one with the turtleneck.

Q Ramon Insua?

A Yes.

Pombo Desiderio.

Q Juan?

A Not Juan.

Q Desiderio Pombo?

A Luis Castro and Alphonso Castro.

Q Who signed the cards?

A Everybody signed the cards.

Q What did you do with your card?

A I gave it to the Union.

Q What did the other employees do with their card, if you saw?

A We all gave them to the Union.

Q Okay.

Now, were you working on January 25th?

A Yes.

Q Were you present when some employees were told that they were laid off?

A Yes.

Q You were not laid off, is that correct?

A Not that day, no.

Q Okay.

What work were you doing on the day that the other

employees were laid off?

A I was scraping the gym.

Q This was at Newtown High School?

A Yes.

Q I direct your attention to the beginning of February.

I ask if you recall having a conversation with Alphonso Castro, about a tax problem concerning your paycheck?

A This happened on a Monday.

On Saturday my taxes, I saw them, that they only had $1,800.00.

That was very little, and I would leave that thing until Monday to talk to Alphonso.

I told Alphonso and he said a person that had a problem with taxes can go to the office to explain to Mr. Prote.

In the afternoon, Alphonso took us in the car and we went.

Q Who is we?

A Me, Alphonso, Desiderio Pombo, and Luis Castro.

Q Where did you go?

A We went to the Brooklyn office.

Q Did you see Mr. Prote there?

A Alphonso said outside, who's going to go in first.

I said I would.

I knocked on the door. Walking inside, before I came near to Mr. Prote's office, Mr. Prote said, are you a mafioso.

I said, why do you say that word to me.

He said, because the people in the Union are mafiosoes. Are you with the Union, too?

And I say, I don't know.

Q Did Mr. Prote say anything?

A Mr. Prote said, why did you come here.

I said, for the income tax. He told me something about the mother of Christ. He said, what do you know, do you want me to rob you.

I said, I didn't say that, I want you to give me this income taxes. I made more.

He says, this is it, do you want to leave it here or take it. I have no more work for you, he said to me. He had pay me with a check.

Mr. Alphonso explained in English that there was no more work.

Q Do you recall, at any point in your conversation with Mr. Prote, that he referred to the other employees who used to work at Newtown?

A Explain to me, please.

Q You testified that Mr. Prote asked you if you were

with the mafioso.

Is that correct?

A Yes.

Q You asked --

Did you ask him who the mafioso was?

A Yes.

Q Did he respond to this?

A He told me the people from the Union.

Q When you had your conversation with Mr. Prote, in what language did you and he converse in?

A Greek.

Q When you were hired by Mr. Prote, did he ever tell you that he was going to lay you off after you finished the Newtown job?

A No.

He always told me there was more work.

Q Did you ever have any conversation with Mr. Prote where he said this to you?

A Explain, please.

Q How did you know that there was more work to do?

A I knew once because Mr. Prote came in when we were finishing a machine in the gym, School 165, and another job that I left in the middle, 500 Pacific Street.

Q Did you have any conversation with Mr. Prote concerning jobs, when you were at Newtown High School?

A Explain that to me. 129

Q Did you have any conversations with Mr. Prote about jobs sometime in January?

A The last day of January, when the job ended, to fix the gym, to call Mr. Prote that that had been finished, what was to do.

He told me to paint all the -- all those black parts.

Q Is this in the Newtown School?

A Yes.

Q On the day that you were laid off, had you completed all your work in Newtown High School?

A I finished the floor, yes.

Q Was there any work left to be done when you were laid off?

A Another school.

Q How do you know this?

A Mr. Prote told me that.

Q When did he tell you this?

A Before he laid me off.

Three months, two months.

Q Did he tell you this in person, face to face?

A Yes.

Q Where did you have this conversation with him, if you can recall?

A No.

Because in the 165 school, we went there because I was going to work there.

I don't know what happened with the school there.

Mr. Prote told me we will do it later.

Q What school were you going to do later?

A 165.

No.

What did you ask me?

Q How many conversations with Mr. Prote did you have where he told you there was more work to do?

A Always he told me, that there was more work.

Q When you say, always, did he tell you this sometime in January?

A Yes.

Q Where were you working when he told you this?

A Newtown.

Q At Newtown High School?

A Yes.

Q Was this a face to face conversation in which he told you this?

A Yes.

Q He told you this on other occasions, too?

A Explain that, please.

MR. FEINSTEIN: Your Honor, I haven't

made objection before, but now Counsel is --

MR. EDELMAN: Withdrawn.

I have no further questions.

JUDGE WEIL: Mr. Dennis?

MR. DENNIS: If I may, just a moment.

Q (By Mr. Edelman) When you spoke to Mr. Prote on these times you were talking about other jobs, in what language did you speak?

A I would speak Greek with Mr. Prote.

The principal of the school, would speak to me in English.

MR. EDELMAN: No further questions.

MR. DENNIS: No questions.

JUDGE WEIL: Mr. Feinstein.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Pantzos, what was the first job you did for Prote Contracting?

A The first, helping the carpenter.

Q At what school?

A 116.

Q After you helped the carpenters, what kind of work did you do?

When?

Withdrawn.

When did you work at 116?

A I started in May or June.

Q Who hired you?

A A friend of mine told me to work for Mr. Prote. He told me Mr. Prote needed a man.

Q What's your friend's name?

A His first name is Lazarro.

Q Did he ever work for Prote?

A Yes.

Q Was he a member of the Union?

A No.

Q Did you know Alphonso before you went to work for Prote?

MR. EDELMAN: Objection as to materiality, Your Honor.

JUDGE WEIL: Overruled.

A No.

Q When did you first meet Alphonso?

A In Newtown High School.

Q When you first went to work for Prote, and you met Mr. Prote, did he ever, at that time, tell you not to join the Union?

A Would you explain that to me?

Q You testified that you met Mr. Prote and he agreed to take you on.

At that time, did he mention anything about the

Union, to you?

A No.

Q Did he tell you what kind of work you would be doing?

A First he said to help the carpenters, and after two weeks, he would take me with the painters.

Q Did you ever work as a painter before?

MR. EDELMAN: Objection.

JUDGE WEIL: Are we --

MR. FEINSTEIN: I think it's relevant, Judge, to show the background, the history of why this man was hired, what his wages were.

Counsel asked him about his wages.

JUDGE WEIL: Nobody objected, either.

I would have cut him off.

I don't see it as relevant, Counselor. We reached the same point you were trying to make earlier, I believe.

MR. FEINSTEIN: Substantially, Judge.

JUDGE WEIL: I still think it's not relevant.

MR. FEINSTEIN: All right.

Q (By Mr. Feinstein) When you worked at Newtown, did you take orders from Alphonso?

A No.

Q Was Alphonso the assistant foreman on that job, when Jimmy was there?

A At that time, Jimmy was there and so was Alphonso.

Q Were there times that Alphonso was there, and Jimmy wasn't working there?

A There was one time.

Q Who was the foreman at that time?

A It was Jimmy in the other school, and Alphonso remained foreman.

Q Did you take orders from Alphonso at that time?

A No.

Q Who would tell the men what to do?

A The other men, Alphonso told.

Q Who told you what to do?

A Mr. Prote.

Q Was Mr. Prote on the job everyday?

A No.

If you needed anything, you would call Mr. Prote, and he would bring whatever you needed to work.

Q On your first --

When you first met Mr. Prote, did he, at that time, tell you that work would be steady?

A I don't know what steady is.

Q Did he tell you that when the job is finished,

you would stop working until he got another job?

A No.

Q Have you ever worked in the painting trade before?

MR. EDELMAN: Objection.

JUDGE WEIL: Sustained.

MR. FEINSTEIN: Your Honor, to show credibility.

He claims that he was supposed to stay on more or less as a steady employee.

I want to show --

JUDGE WEIL: He didn't claim that.

MR. FEINSTEIN: He didn t know what the word steady means.

JUDGE WEIL: When you asked him the question, he said, no.

All that meant is that Mr. Prote hadn't said that to him.

MR. FEINSTEIN: I want --

JUDGE WEIL: I can't assume from that that Mr. Prote said the contrary.

MR. FEINSTEIN: I'd like to establish whether or not he's had any experience in the construction trade at all, so he would have known that when jobs are finished, there's a possibility of being laid off.

JUDGE WEIL: I'd like to know why that's

material.

Suppose he had knowledge -- suppose he knows as much about it as you know, that in the construction trade there's a possibility of being laid off, where does that advance us?

MR. FEINSTEIN: He'd have knowledge that when a job is finished, there's a possibility he'd be laid off and not sent to another job.

JUDGE WEIL: Where does that take us?

MR. FEINSTEIN: The fact that he was laid off, because of that reason, and not for any other reason.

That's what we're trying to establish here.

JUDGE WEIL: You're trying to establish it to me, not to him.

MR. FEINSTEIN: Yes.

JUDGE WEIL: His knowledge of the possibility of a layoff isn't going to help me decide the motivation behind this witness.

MR. FEINSTEIN: Okay.

Q (By Mr. Feinstein) Now, some of the men were laid off in January, at Newtown High School, is that correct?

A Explain to me, please.

Q Well, you worked at Newtown High School, is that

right?

A Yes.

Q Some of the men were laid off before you were laid off?

A Lay off?

Q Let go, fired.

A No.

On January 25th it was when Alphonso was downstairs, and we were in the basement changing clothes. And he said that -- he said that the people that had a day worked, had worked a day, that there was no more work for them.

Q How many men did he tell that to?

A I remember four men.

Q Did these men sign Union cards?

A Yes.

Q How many men kept working on the job?

A There were four left.

There were seven and myself.

Eight that stayed.

Four stayed.

Q The four that stayed, did they sign Union cards?

A Yes.

Q When Alphonso told those men there was no more work for them, did he, at any time, mention the Union?

A No.

Q Did Mr. Prote come to the job and lay off the men?

A I only saw that everyone was in the basement, and Alphonso came and said that they have -- those that have a day worked, there is no more work.

Q Did those men at that time, who were laid off, did they make any complaints that they were being laid off because they joined a Union?

MR. EDELMAN: Objection.

JUDGE WEIL: Sustained.

Q Well, at that time, was there any conversation at all about the Union?

A I don't remember.

Q How long after that did you continue to work?

A I worked until February 4th.

Q What kind of work did you do from January 25th to February 4th?

A Fixing a floor, the gym floor. Finishing the floor.

Q On February 4th, was the gym floor finished?

A I finished it on February 2nd.

Q What did you do between February 2nd and February 4th?

A February 2nd was a Saturday.

On Monday I called Mr. Prote, and Mr. Prote told

me to start to paint all the black parts.

Q When you were let go on February 4th, were there other men still working on the job?

A At that time, there was Alphonso, Pombo, Luis Castro, and Jimmy.

Q Did these men sign Union cards?

A I don't know, because -- I don't know about Jimmy. The others signed.

Q Do you know what work was left to be done on that school, after February 4th?

A Almost all the first floor was left, and the basement. And some stairways.

Q How many floors in the whole building?

A If I remember correctly, five floors.

Q Was the entire basement to be painted, or just the auditorium?

A That I don't know.

Q After you were laid off, Mr. Pantzos, isn't it a fact that Prote called you back to do some other floor refinishing?

A The time he laid me off --

MR. FEINSTEIN: Your Honor, I'd just like a yes or no answer to that question, please.

THE WITNESS: That goes outside of the matter.

JUDGE WEIL: Tell him to give a yes or no answer.

THE WITNESS: I went to Unemployment.

Unemployment office told me that I was jumping out of a boat, that I couldn't collect unemployment, and told me that I don't have a car to work in this country.

They told me that I only worked fifteen weeks.

MR. FEINSTEIN: Your Honor, he's not --

Q Were you ever notified by Prote or Unemployment, that Prote had more work for you and to come back to do some work?

Just yes or no.

A Mr. Prote called Unemployment and said, he said that I should come back.

I said, would I be paid the Union wage.

Unemployment told me they didn't know.

MR. FEINSTEIN: Judge, he's not answering the question.

Q Did you ever contact Mr. Prote after you learned that Mr. Prote wanted you back?

A Nobody told me to call Mr. Prote.

Once --

Q Wait. Please.

MR. FEINSTEIN: Your Honor, I wish you'd instruct the witness just to answer my question.

JUDGE WEIL: Do you see that to be an answer to my question?

MR. FEINSTEIN: Yes, but he's continuing.

JUDGE WEIL: All right.

Q But you did know from Unemployment, that Prote had offered you more work, is that not so?

A Explain that to me, please.

Q After February 4th, didn't Unemployment inform you to go back to Prote, because Prote had more work for you?

A Yes.

Q Okay. That's all.

Did you ever go back to Prote?

A I didn't go back, because --

MR. FEINSTEIN: Your Honor, --

JUDGE WEIL: We don't want the explanation. I mean, he doesn't want the explanation.

Q Alphonso is the one that told you that to join the Union is a good thing, is that right?

A Alphonso and the man from the Union, too.

Q Do you know if Alphonso was ever fired by Prote?

A What's fired?

Q Let go.

A No.
Q No, you don't know, or he never was?
A Alphonso?
The time I knew him, he wasn't fired.
Q And the other men that were still working when you were laid off, do you know if they kept working at Newtown High School until that job was finished?
A I know that -- don't know if they continued on that job, because I don't know the day the job ended.
Q Now, Mr. Pantzos, did you file charges against Prote with the National Labor Relations Board?
A Explain to me, please.
Q Do you claim that Prote laid you off because you joined the Union?
MR. EDELMAN: Objection, Your Honor.
MR. FEINSTEIN: Judge, that's this charge that he's making.
JUDGE WEIL: I'll overrule the objection.
MR. EDELMAN: Pantzos filed the charge or Pombo?
MR. FEINSTEIN: His name is Pantzos, isn't it?
MR. EDELMAN: Is that part of the Complaint?
MR. FEINSTEIN: Yes.
MR. EDELMAN: All right.

MR. FEINSTEIN: What was the last question?

JUDGE WEIL: Do you claim you were discharged because of labor --

Q Are you making a claim that you were discharged because you joined the Union?

A No.

Q Why were you discharged?

MR. EDELMAN: Objection.

MR. FEINSTEIN: It's completely relevant.

MR. EDELMAN: It calls for a conclusion of the witness.

We investigated the case, Your Honor, and it's our conclusion, not the witness' conclusion.

MR. FEINSTEIN: The witness signed the charge.

JUDGE WEIL: If the witness signed the charge that makes this statement, that Counsel has the right to inquire of him when he says he doesn't claim what the charge claims.

I'll permit it.

Do you want to ask the question again?

MR. FEINSTEIN: Yes.

Q Why were you laid off?

A I say I was laid off because I went there with the income tax paper.

Q At any time, did Mr. Prote tell you or anybody else in your presence, that if they joined the Union they would be fired?

A He didn't say that to me.

I don't know about the others.

MR. FEINSTEIN: I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Pantzos, did you come in and file a charge with this Agency, by yourself?

A Yes.

Q Did the Union tell you to come in and file this charge, or was it your own idea?

A The Union.

Q Who in the Union told you to file a charge?

A Frankie Jaume.

Q Jaume?

A Jaume.

Q Did you talk about your discharge to Mr. Jaume before you filed the charge?

JUDGE WEIL: Counsel, what charge are you referring to?

Excuse me, I'm addressing myself to Mr. Feinstein.

MR. FEINSTEIN: I was addressing myself --

JUDGE WEIL: What charge did you have

reference to that this witness allegedly signed.

MR. FEINSTEIN: Here's a charge that says on or about February 4th --

JUDGE WEIL: That he signed.

MR. FEINSTEIN: It doesn't appear to be signed by him, but --

JUDGE WEIL: All right.

I will entertain a motion to strike the questions and answers.

The answers to those questions about why he was discharged.

MR. EDELMAN: I make that motion at this point in time, Your Honor.

JUDGE WEIL: I'll strike it.

MR. FEINSTEIN: Are you leaving the answer, Judge, that when he said he was not discharged because of Union membership?

JUDGE WEIL: I'm leaving the answer to your last question, when you asked him why he thought he was discharged, and he said because he asked about the income tax.

MR. FEINSTEIN: Right.

MR. EDELMAN: I have no further questions, Your Honor.

JUDGE WEIL: Thank you; you may step down.

(Whereupon, this witness was excused.)

JUDGE WEIL: We'll take a few minutes.

(Whereupon, there was a short recess taken in the hearing.

JUDGE WEIL: On the record.

The hearing will be in order.

MR. EDELMAN: General Counsel calls as its next witness, Jose Gonzales Otero.

Whereupon,

JOSE GONZALES OTERO

called as a witness, was duly sworn, through the Spanish Interpreter, Frank Monti, and testified as follows:

JUDGE WEIL: Be seated.

Tell us your name and address.

THE WITNESS: Jose Gonzales Otero.

343, 19 West -- West 19th Street, New York. New York.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Otero, were you ever employed by Prote?

A Yes.

Q Would it be fair to say that you began working

for Prote sometime in June of 1973?

A Yes.

Q Who hired you to work there?

A Alphonso Castro.

Q What kind of work did you do for Prote?

A Painter.

Q What were your hours, your working hours?

A Seven hours.

Q When did you start work and when did you finish?

A Eight in the morning and 3:30 in the afternoon.

Q During your employ at Prote, where did you paint?

A In high schools.

Q Were these New York City schools?

A Yes.

Q Who was the individual who told you what to do on a daily basis?

A At first, Alphonso.

Afterwards, Jimmy.

Q Alphonso, is that Alphonso Castro?

A Yes.

Q Was that Jimmy Satchell?

A Yes.

Q Do you recall sometime in the fall of 1973, having a conversation with Alphonso Castro about the Union?

A Yes.

Q Can you tell me what was this conversation?
What did he say to you, what did you say to him?
A Well, we were -- he spoke to us about the Union.
Then I told him why hadn't you told me that the nam that was with him was from the Union.
Q What did he tell you about the Union?
A He said that he would look into that later.
Q Did he tell you that a man from the Union had been to the school?
A No.
He told me in the car.
Q What did he tell you in the car?
A That a man had been there from the Union.
Q Who told you this?
A Alphonso.
Q This was in the car?
A Yes.
Q Were you with anybody at this time?
A In the car?
Q Yes.
A Yes.
Q Who were you with?
A Luis Castro, Alphonso Castro, Felipe Beiro, Manuel Camanyo.
Q Did Alphonso Castro speak to you in Spanish?

A To who, me?

Q Did he speak to all the employees in Spanish?

A Yes.

Q When he told you this, did the other employees hear this?

A Yes.

Q Did the employees, either you or any of the other employees, or all of you, did you say anything to Mr. Castro?

A Yes.

That we want to be Union.

Q Now, during the month of January, in 1974, what school were you working at?

A 165, in Queens.

Q Were you working atthe same school when you had the conversation with Castro, in the car?

A No.

Q What school were you working at, at that time?

A The one here on Elmhurst.

Q Is that Newtown High School?

A Newtown High School.

Q Newtown High School?

A Yes.

Q So, you were working in Newtown High School in the fall of '74?

A Yes.

Q Then you went over to 165 in the winter?

A Yes.

MR. EDELMAN: If I said fall of '74, I meant fall of '73.

I'm not sure what the record has indicated.

JUDGE WEIL: I doubt if this witness has testified about anything in the fall of '74.

MR. EDELMAN: I doubt it, too, Your Honor.

Q I direct your attention to January 18th, and ask if you recall signing a card for the Union on that day?

A Yes.

Q Who gave you the card to sign?

A Alphonso Castro.

Q How did he give it to you?

How did he happen to give you this card?

A I --

Q Where were you when he gave it to you?

A I was at home.

I lived with him.

Q He gave you this card?

A Yes.

Q You signed it?

A Yes.

Q On January 25th, were you told there was no more

work for you?

A Jimmy.

Q Jimmy told you there was no more work for you?

A Yes.

Q Did he tell anybody else that there was no more work?

A Yes.

Q Who did he tell?

A Juan Pombo.

Q At the time of your layoff, were you working at P. S. 165?

A Yes.

Q How many other employees were working at P. S. 165?

A Juan Pombo, Jimmy, and me.

Q When you were laid off, did you have any other work that had not been completed?

A In the school?

Q In the school.

A Yes.

Q What was the work that you had that had not been completed?

A At the last, I was doing the woodwork.

Q All right.

What work had to be done?

A A room down stairs was remaining, in the basement,

and a toilet, that I know.

Q All right.

About how much work, in days, was left to do?

A I can calculate more or less from ten to fifteen days. Something like that.

MR. EDELMAN: No more questions, Your Honor.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Otero, you were laid off on 165, on January 10th, is that correct?

A No.

Q What date were you laid off?

A The 25th of January.

Q You're sure it was the 25th?

A Yes.

Q What makes -- What makes it stick in your mind that it was the 25th?

A Well, because the day I was laid off, he laid off Juan Pombo and the other boys.

Q The other boys were working at Newtown High School though, isn't that correct?

A Yes.

But we met here at 14th Street.

Q Now, did you know before the day that you were laid off, that you were going to be laid off?

A No.
Q Did you know that the work was almost finished?
A Would you explain it to me again?
Q Well, did you know a few days before January 25th, that the painting work was almost finished?
A No, because we went -- we went to the other school in Queens on Saturdays.
Q What other schools did you go to on Saturday?
A No, that was the only one in Queens.
Q Well, did you know that the work at P. S. 165 was almost finished?
A Some days were left, but I didn't know anything.
Q Now, Alphonso is a friend of yours, is that right?
A Yes.
Q In fact, you live together, is that right?
A Yes.
Q And did Alphonso ever tell you that if you joined the Union, you'd be fired?
A No.
Q Did Mr. -- Did you ever have conversations with Mr. Prote?
A No.
Because I don't speak English.
Q Did anybody from Prote ever tell you that if you

joined the Union, you would be fired?

A No.

Q Did anybody from Prote tell you that if you didn't belong to the Union, you would be hired back?

A Could you explain the thing to me again?

Q After you were laid off, --

Withdrawn.

At the time you were laid off, you signed a card for the Union, is that correct?

A Yes.

Q Now, after you were laid off, did anybody from Prote tell you that if you didn't sign the card for the Union, they would give you more work?

A Once, Felipe discussed that he called Mr. Prote on the telephone and told us to forget the matter and come back to work.

Q Well, --

MR. FEINSTEIN: I'll object to that as not being responsive, Your Honor.

Q Did Alphonso, Jimmy, Jerry, or Mr. Prote, ever tell you personally or through an interpreter, that if you did not join the Union, they would have more work for you?

A No.

Q And do you know if Alphonso is a member of the

Union?

A I don't know.

Q Did he sign a card the same time you signed a card?

A I don't know.

Q Did Mr. Prote or anybody else from Prote Contracting, ever question you about your membership in the Union?

A Who?

If they asked me what?

Q Ever asked you you any questions about your membership in the Union.

A I don't remember.

MR. EDELMAN: I'd object to this, Your Honor, on two grounds.

One is that in his direct examination, the subject was not covered, and secondly, if we persued this type of questioning, there are an infinite number of questions put to him, as to what Mr. Prote did or did not do.

So, I would object on both grounds.

JUDGE WEIL: I'll overrule the objection.

I'll let Counsel gamble, if he wants to.

MR. EDELMAN: Very well.

Q (By Mr. Feinstein) Did you ever authorize the

Union to file charges on your behalf against Prote Contracting?

MR. EDELMAN: Objection.

JUDGE WEIL: Sustained.

MR. FEINSTEIN: Well, Your Honor, as I understand it, the Union has brought charges on behalf of this witness, against Prote Contracting.

I want to know if they were ever authorized to do that.

JUDGE WEIL: They don't need authorization.

The charge is technical, and not speaking on behalf of these people, but rather on behalf of the citizens of the United States.

MR. FEINSTEIN: I have no other questions.

MR. EDELMAN: I have no redirect, Your Honor.

MR. DENNIS: No questions, Your Honor.

JUDGE WEIL: I have one.

Does Jimmy Satchell speak Spanish?

THE WITNESS: No.

JUDGE WEIL: Thank you. That's all.

You may step down.

(Whereupon, this witness was excused.)

MR. EDELMAN: General Counsel would call as its next witness, Ramon Insua.

Whereupon,

RAMON INSUA

called as a witness, was duly sworn, through the Spanish Interpreter, Frank Monti, and testified as follows:

JUDGE WEIL: Be seated.

State your name and address.

THE WITNESS: Ramon Insua.

244 14th Street, New York, New York.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Insua, were you ever employed by Prote Contracting?

A Yes.

Q Would it be fair to say that you began your employ with Prote sometime around October of 1973?

A Yes.

Q Do you recall who it was that hired you?

A Alphonso Castro.

Q What type of work did you do while you were working at Prote?

A Painting.

Q When did you begin work each day?

A At eight in the morning until 3:30.

Q Where did you paint for Mr. Prote?

A In Queens.

Q Was this at public schools?

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A Yes.

Q What school were you working at the time of your discharge?

A In that school.

Q What school was that, do you know the name of the school?

A No.

Q The number of the school?

A No.

Q Is that the 165 school?

A I don't know.

Q Was it a public school or a high school, do you know that?

A I --

Q A school for little children or big children?

A For the older children.

Q Older children.

Was there a man there that told you what to do every day, gave you your orders?

A Yes.

Q Who gave you your orders each day?

A Alphonso Castro.

Q Do you recall having a conversation sometime in the winter of '73 or '74 with Alphonso, in the car, going home?

A No.

Q Do you recall having a conversation with Alphonso about a visit by some men from the Union?

A Yes.

Q Can you tell me about when this visit took place?

A I don't know, because I wasn't there working that day when they visited once.

Q Well, did Alphonso speak to you about a visit that Union men made to the school?

A Yes.

Q Where were you working, at what school were you working, when he spoke to you?

A In that school in Queens.

Q Is this the school where the big children go?

A Yes.

Q Were you along when Alphonso spoke to you, or were you with other employees?

A Others were there.

Q Can you tell me who was there?

A Pepe Gonzales, Desiderio Pombo, Luis Castro, Euripidis.

Q Euripidis Pantzos.

A Yes.

Q What did Alphonso tell you, and what did the employees tell Alphonso?

A Alphonso said that the men from the Union had been there to see if we wanted the Union.

We told him, why didn't he advise us, because we wanted to join the Union.

Q Were you present when -- Were you present on January 18th, when the Union men came into the school?

A Yes.

Q Did they speak to you and other employees?

A They spoke with Alphonso Castro.

Q Were you present when they spoke to Alphonso?

A Yes.

Q Where did they speak to Alphonso?

A On the first floor.

Q Was that in a classroom?

A In the class, but like in a carpentry room, something like that.

Q What time did they speak with Alphonso?

A They came there in the morning.

Then they left and they came back around twelve.

Q All right.

Did they speak to the employees when they came back around twelve?

A With Alphonso, because we didn't speak English.

Q I see.

So, then they spoke to you,when Alphonso was

there, and other employees were there?

A Yes.

Q Where did they speak to you?

A On the first floor.

Q In the same classroom?

A Yes.

Q Who spoke to you?

Do you know which man from the Union spoke to you?

A Frank.

Q Frank Jaume?

A Yes.

Q What did he say to you and what did you say to him?

A He spoke to us about the benefits the Union had.

Q Did you --

Did the employees say anything after he spoke to them about benefits?

A Yes.

That we would like to join the Union.

Q Did you ever sign a card for the Union?

A Yes.

Q Did you sign a card on this day?

A Yes.

Q Did you sign a card after your conversation with the Union people?

A Yes.

Q Were you discharged on January 25th?

A Yes.

Q Who told you that you could not work there any more?

A Alphonso Castro.

Q Was anybody else discharged with you?

A Yes.

Q Who was that?

A It was Pepe Gonzales, Ismael Rial, Felipe Beiro.

Q When you were laid off, did you have work that you hadn't done?

A Yes.

Q What was the work that still remained to be done?

A The first floor remained, some stairways, and the basement.

Q About how many days work would you say that was?

A Around a month or two.

Q Had anybody told you at any time that you would be laid off when this job was done?

A No.

Q Had anybody told you at any time that this was not a permanent job?

A No.

MR. EDELMAN: No further questions.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Insua, when you were laid off, there was still some work to be done, is that correct?

A Yes.

Q But some men were not laid off, and they were to do that work, is that right?

MR. EDELMAN: Objection.

Calls for a conclusion, Your Honor.

JUDGE WEIL: Yes, it does.

I think if you break your question up --

MR. FEINSTEIN: I'll rephrase it.

JUDGE WEIL: That might help.

Q How many men worked on that job --

Withdrawn.

What was the most number of men that worked on that job?

At one time.

A Around eight men.

Q This was a pretty big school, was it not?

A Yes.

Q How many different places would the eight men work?

A I --

JUDGE WEIL: You mean at one time?

MR. FEINSTEIN: At one time.

A That I don't know, because I don't go around looking at the men.

Q But it would be more than one or two places, is that right?

A Yes.

Q How many men would work in one room at a time?

A Two.

Q Now, when you were laid off, how many men were still working on the job?

A Three remained.

Q At -- Was that including the foreman, or not including the foreman?

A Yes. Including.

Q Well, Luis Castro remained, is that correct?

A Yes.

Q Desiderio remained, is that correct?

A Yes.

Q And Alphonso remained, is that correct?

A Yes.

Q Jimmy came to that job at that time, isn't that correct?

A I don't know if he came in those days.

I didn't go back to work after that.

Q When you were laid off, the fifth floor was

completely painted, is that right?

A I'm not sure if it was painted or not.

There the workers do what they're sent to do, and they don'g go looking what is done and what is to be done.

Q How long had you been working on that job?

A Around three months.

Q When you were laid off, would you say the work was almost finished, in that school?

A No.

Q When you were laid off, did Alphonso mention anything to you about the Union?

A No.

Q At any time, did Alphonso or Mr. Prote, or anybody else from Prote Contracting, tell you that if you joined the Union, you would be laid off?

A No.

Q Did anybody from Prote Contracting tell you, at any time, that if you did not belong to the Union, they would have more work for you?

A No.

Q At any time, did Mr. Demetriades, Mr. Prote, or anybody else from Prote Contracting, question you about your Union membership?

A No.

Q Okay.

MR. FEINSTEIN: No other questions.

MR. EDELMAN: I have no redirect, Your Honor.

MR. DENNIS: No questions.

JUDGE WEIL: Thank you; you may step down.

(Whereupon, this witness was excused.)

MR. EDELMAN: I call Juan Pombo as the next witness.

Whereupon,

JUAN POMBO

called as a witness, was duly sworn through the Spanish Interpreter, Frank Monti, and testified as follows:

JUDGE WEIL: Be seated.

State your name and address.

THE WITNESS: Juan Pombo.

105 Bennett Avenue, Manhattan.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Pombo, were you ever employed by Prote Contracting?

A Yes.

Q Would it be fair to say you began working for Prote sometime around July of 1973?

A Yes.

Q Do you know who hired you?

A Who hired me?

Q Yes.

Who hired you.

A I don't understand.

Q Who told you to go to work?

A It was my brother who worked there before.

Q He told you about the job.

Who told you to start working?

A That man.

Q Mr. Prote?

A Yes, sir.

Q Dr. Demetriades.

What were you -- What did you do when you were employed by Prote?

A Painter -- Painting.

Q When did you begin your work each day?

A At eight.

At noon we stopped and lunched, until 3:30.

Q During your employ at Prote, where did you work?

A The first school was in Jamaica.

Then we went to Queens, to 165, I think.

Then we went to a high school, and then from the high school, lastly we went back to 165.

Q Okay.

Now, who told you what to do each day?

A Well, the first month this man, and Jimmy also was there.

Afterwards, always Jimmy or Alphonso.

Q Now, do you recall in November when you were working at the high school, some Union men came into the school and spoke to Alphonso?

A No.

I remember -- Excuse me.

When I left, Frank was at the door.

But I ignored that it was the Union.

The next day was when Alphonso said that it was the Union.

Q Okay.

So, you had a conversation sometime when you were working at the high school, with Alphonso?

A Yes.

Q And he told you about a visit to the school the day before, by some men from the Union?

A Yes.

Alphonso explained all that.

Q Okay.

Now, where were you when Alphonso explained all this?

A In the school. In the school itself.

Q What did Alphonso say to you?

A Alphonso said, he -- referring to everybody, talked about the Union.

The purpose of the Union, the benefits the Union had, and if -- and asked if we were in accordance with entering the Union, and we all said that, yes, we were, including Alphonso, who said he was going to join the Union.

Q Okay.

Who were those employees who were present with you at this time?

A It was all of them, Pepe Gonzales, Ramon Insua, Jose Gonzales Otero, Euripidis, Rial, Ismael Rial, excuse me, and Felipe -- Felipe Beiro. And Alphonso.

Q Now, do you recall sometime in January you were transferred over to 165?

A Yes. I was in that one.

Q Do you recall that when you were in 165, in January, the Union men came down to the school?

A Yes, sir.

Q Did you --

A Mr. Dennis.

Q Mr. Dennis.

A And some other man.

They spoke with Jimmy.

Q All right.

You saw them speak to Jimmy?

A Yes. Yes.

Q All right.

Did they speak to you at this time?

A No, sir.

Q After they spoke to Jimmy, did Jimmy speak to you?

A Yes.

He said it was the Union.

Q Did he say anything else?

A No.

Because since I don't understand English, he couldn't.

Q Okay.

A I couldn't understand him.

Q On or about January 18th, did you sign a card for the Union?

A Yes.

Q On January 25th, were you told that you were discharged and you no longer were working for Prote?

A Yes.

Q Okay.

A Jimmy.

Q Jimmy told you this?

A Yes. Jimmy.

Q Did he tell you why you were no longer working for Prote?

A No motives.

He didn't say anything.

Q Was there any more work for you to do at this school, when you were let go?

A There was the basement to do, and certain doors to do, as well.

Q The basement and certain doors?

A Certain doors that had to be done on the bottom.

Q Would these be baseboards on the hallways?

A Yes. Also that.

Q That, too?

A Yes.

Q How many days work would you say that this would be?

A I --

MR. FEINSTEIN: Hold it. Wait.

I'll object unless this witness is qualified as an expert in painting, to testify how many days work were left.

MR. EDELMAN: I'll rephrase my question.

JUDGE WEIL: All right.

Q (By Mr. Edelman) Based on your rate of painting -- You perform painting for Prote, is that correct?

A Yes.

Q Based on your rate at which you painted, how many days would you say it would take you and, who was laid off with you, you and the other employee who was laid off with you, to perform the work that remained?

A From ten to fifteen days.

A little bit was left.

MR. EDELMAN: No further questions.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Pombo, it would take ten to fifteen days to do the basement, is that right?

A Yes. More or less.

Q And two men, is that right?

A The ones that were working there.

Q Do you know how much of the basement had to be painted?

A The entrance part, the part at the bottom, the -- where the pipes were and all of that.

Q Well, how do you know this?

Did you read the specifications?

A No.

Jimmy was commenting.

Q Now, you're sure you were laid off on January 25th, and not on January 10th, is that right?

A The 25th of January.

Q Now, when you were laid off, did Jimmy say anything to you about the Union?

A No.

Q Did anybody from Prote on that -- at that time, say anything to you about the Union?

A Well, there was a remark.

Q By who?

A That Alphonso said, that all of us were going to be sent to the street.

Q Well, Alphonso didn't work at 165, did he?

A Yes, but we saw each other in a bar.

Q I see.

Was Alphonso ever laid off?

A When, then?

Q At any time.

A How laid off?

Q Fired from Prote.

A Alphonso fired?

Q Was he?

A No.

Q Alphonso is the one that recommended that you join the Union, isn't that right?

A Yes, sir.

Q Did Mr. Prote ever tell you that if you joined the Union, you would be fired?

A Alphonso said that.

That all of us would be.

Q Who was present when Alphonso said that?

A All the boys were there.

Q Were you here when they testified before?

Sir, were you present when they testified before?

A Yes.

Q Did you hear anyone of them say that --

MR. EDELMAN: Objection.

Q That Alphonso said that you're all going in the street, if you belong to the Union?

MR. EDELMAN: Objection.

JUDGE WEIL: Overruled.

A I didn't listen to them.

Q When, when did Alphonso say that?

A That might have -- That should have been around the 4th or 5th of February.

Q But at that time, you were already laid off, isn't that so?

A We were already fired.

Q But before you were fired --

Withdrawn.

On February 4th and February 5th, when Alphonso said that to you, there was still Union men working at Newtown High School, isn't that right?

A There was my brother, and Luis Castro.

Q Before you were laid off, did anybody from Prote question you about the Union?

A No.

Q After you were laid off, did anybody from Prote tell you that if you did not join the Union, they would have more work for you?

A Yes.

Q Who told you that?

A When I went to Unemployment, Felipe Beiro, who spoke English, we asked Mr. Prote for the taxes over the phone.

MR. FEINSTEIN: Your Honor, I'm going to object to anything, unless he personally had a conversation with Mr. Prote or any official of Prote, not to what a fellow employee told him.

MR. DENNIS: May it please the Court, he asked the question, who told you that.

MR. FEINSTEIN: My question was, who, from Prote --

MR. DENNIS: That was not your question.

You said, who told you that.

Let it be read back.

(Whereupon, the requested question was read back by the reporter.)

JUDGE WEIL: I'm going to overrule the objection.

I'm going to overrule your objection to the answer to your question.

MR. FRINSTEIN: Okay.

JUDGE WEIL: I want to hear the rest of what happened.

Mr. Witness, you were present at the Unemployment Compensation Office?

Is that what you're about to tell us?

THE WITNESS: When they called Mr. Prote?

JUDGE WEIL: Yes.

THE WITNESS: No. It was at the Union.

Excuse me.

We had called Unemployment, Frank was there, Frankie Jaume, from the Union, and I, and Mr. Prote reported me saying that I had -- that I had jumped out of the boat, that I didn't have -- that nobody had any rights.

There's a written paper that the girl in Unemployment wrote.

MR. FEINSTEIN: Your Honor, I object.

Completely not answering my question. Completely irrelevant.

My question was --

JUDGE WEIL: It may be completely irrelevant, but it completely explains the prior answer you got, probably to your surprise.

MR. FEINSTEIN: Okay.

Q (By Mr. Feinstein) Did you, sir, ever talk to Mr. Prote directly?

A About what?

Q About the Union.

A No.

Q Did Alphonso ever say to you, directly, that if you did not belong to the Union, you would have more work from Prote?

A When Felipe Beiro called from the Union, asking for the taxes, we told him forget the question, and come to work.

MR. FEINSTEIN: Your Honor, that's not responsive.

JUDGE WEIL: Obviously.

Q (By Mr. Feinstein) Would you please tell us if Alphonso told you directly, face to face, that if you did not join the Union, you would have more work from Prote?

A I don't remember.

MR. FEINSTEIN: I have no further questions.

oOo

REDIRECT EXAMINATION

Q (By Mr. Edelman) You testified a minute ago that Alphonso had a conversation with you, and if I'm not mistaken, he said that you were -- you would be let go because you joined the Union?

MR. FEINSTEIN: I'll object.

That's not what the witness testified to.

JUDGE WEIL: I don't think it is.

MR. EDELMAN: I may be mistaken on that, too, Your Honor.

I wonder if we could have the record read back.

I'd like to explore that.

JUDGE WEIL: I think it's been adequately explored, Counselor.

He testified with an affirmative to that question, and then asked to explain it, he gave an explanation that did not explain it, but explained how he reached that conclusion, I think.

MR. EDELMAN: I'll withdraw my question.

I have no further questions.

JUDGE WEIL: Anything further, gentlemen?

MR. FEINSTEIN: No.

JUDGE WEIL: Thank you; you may step down.

(Whereupon, this witness was excused.)

MR. DENNIS: At this point, Your Honor, may I beg the Court's indulgence to excuse me and Mr. Blumberg?

We have to be at the District Council by five.

JUDGE WEIL: Surely.

MR. DENNIS: Mr. Edelman will take care of our situation.

JUDGE WEIL: Yes.

MR. DENNIS: Thank you, sir.

(Whereupon, Mr. Dennis and Mr. Blumberg leave the hearing room.)

JUDGE WEIL: We'll take a five minute recess.

(Whereupon, there was a short recess taken in the hearing.)

JUDGE WEIL: The hearing will come to order.

MR. EDELMAN: General Counsel calls as its next witness, Ismael Rial.

Whereupon,

ISMAEL RIAL

called as a witness, was duly sworn through the Spanish Interpreter, Frank Monti, and testified as follows:

JUDGE WEIL: Be seated.

State your name and address.

THE WITNESS: Ismael Rial.

343 19th Street, New York.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Rial, were you ever employed by Prote?

A Yes.

Q Would it be fair to say that you began working for Prote in October of 1973?

A In between October and November.

I don't remember well the exact date.

Q Who hired you?

A Alphonso.

Q What did you do when you worked at Prote?

A Painting.

Q What time did you begin each working day, and what time did you end each working day?

A We started at eight and we finished at 3:30.

Q What school did you work at, while you were employed by Prote?

A Newtown.

Q That's a high school, is that correct?

A Yes. High school.

Q Who told you what to do each day and gave you

your orders?

A Alphonso.

Q That's Alphonso Castro?

A Yes.

Q On January 18th, were you working in Newtown High School?

A Yes, I was.

Q Do you recall a visit from three of the Union men on that day?

A Yes.

Q Did you see them come in?

A I saw them there when they were speaking to us in the passageway.

Q What floor was that?

A In the basement.

Q Were they speaking to you in a classroom, a printing room?

A I think it was a printing room, because it had machines in it.

Q All right.

Do you recall how many people from the Union came there?

A Three.

Q Do you know who they were?

A Not until they came.

Q Do you know who they are now?

A Yes.

Q Who were they?

A Dennis, this man, and Frankie.

MR. FEINSTEIN: Your Honor, in order to expedite it, can we just stipulate that this man would testify the same as the other men, up until the time he signed the Union card?

JUDGE WEIL: I'd be happy to take such a stipulation.

MR. EDELMAN: Pardon?

JUDGE WEIL: I'd be happy to take such a stipulation, if General Counsel prefers it.

MR. EDELMAN: I'd go along and stipulate he would testify as the other employees did, who were employed at Newtown High School, on that day.

MR. FEINSTEIN: Right.

Up until the time he signed the Union card.

MR. EDELMAN: Right.

Up until the time he signed the Union card.

We'll concede he signed the Union card, as the others.

MR. FEINSTEIN: Right.

MR. EDELMAN: Okay.

Q (By Mr. Edelman) Now, is it a fact that on

January 25th, you were told that you would no longer be working for Prote?

A Yes.

Q Who told you this?

A Alphonso.

Q When you were working in Newtown, had you completed all the work that you were supposed to be doing?

A No.

It hadn't been finished yet.

Q What was left to be done?

A Hallways, the auditorium, some classes. And, I think, also, the cafeteria.

Q All right.

At the rate in which you were painting, how long would it have taken four employees to have completed this job?

A I don't know how to calculate.

Maybe a month or so.

Q Did anybody tell you during your employ, that after you completed the Newtown job, you would be laid off, no more work for you?

A No.

MR. EDELMAN: I have no further questions.

CROSS EXAMINATION

Q (By Mr. Feinstein) Did you know Alphonso before

A Yes, I saw him around there.

Q Alphonso joined the Union the same time you joined the Union?

A Yes.

Q In fact, Alphonso recommended that you join the Union, is that right?

A Yes, he spoke to us about that.

Q When Alphonso laid you off on January 25th, did he tell you why you were being laid off?

A No.

Q Did he say anything to you at that time about your Union membership?

A No.

Q At any time, while working at Newtown, did Alphonso, Mr. Prote, Jimmy or any other official of Prote Contracting, tell you that if you joined the Union, you would not be able to work for Prote?

A No.

Q After you were laid off, did any official of Prote tell you that if you didn't belong to the Union, they would have more work for you?

A No.

Q Did Mr. Prote, at any time, face to face with you, question you about your Union membership?

A No.

MR. FEINSTEIN: No other questions.

MR. EDELMAN: I have no questions.

JUDGE WEIL: Thank you; you may step down.

(Whereupon, this witness was excused.)

MR. EDELMAN: I have one last witness at this point, Jose Gonzales.

I guess this would be Pepe Gonzales.

If we can get a stipulation, we can stipulate to most of his testimony.

He also worked at Newtown High School.

JUDGE WEIL: Let's swear the witness.

Whereupon,

JOSE GONZALES

called as a witness, was duly sworn through the Spanish Interpreter, Frank Monti, and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: Jose Gonzales.

414 36th Street, New York, New York.

MR. EDELMAN: Your Honor, if we can enter into a stipulation that Jose Pepe Gonzales, began working for Prote on or around October of '73, was hired by Alphonso Castro as a painter, worked the hours that the other employees worked, worked exclusively at Newtown High School, where Alphonso was his foreman, and if we can further stipulate that sometime in the winter, before

January 18th, Alphonso told him about a visit from Union men the day before, and asked if they wanted a Union, the employees said that they did want a Union, and if we can further stipulate that on January 18th, around lunch-time, the witness observed the other employees who have testified, three men from the Union, Mr. Blumberg, Mr. Jaume and Mr. Topp, come into the building, and that Alphonso was present, and that the Union men spoke to Alphonso, and the employees, in a classroom on the first floor, told them about Union benefits, asked the employees if they would agree to join a Union, and that the employees agreed, and that thereafter the Union men spoke with Mr. Prote outside the classroom, and that this witness did not overhear the conversation, and that after the completion of this work day, the -- this witness, along with other employees, met with Union representatives at a nearby neighborhood bar and signed a Union card, we will not need any testimony on that.

MR. FEINSTEIN: I will so stipulate on that.

JUDGE WEIL: Very well.

I will receive the stipulation.

MR. EDELMAN: All right.

DIRECT EXAMINATION

Q (By Mr. Edelman) Mr. Gonzales, do you recall

that On January 25th, you were told by Mr. Castro that you would no longer be working for Prote?

A Yes.

Q At the time that you were laid off, was all the painting work complete, at Newtown High School?

A No, it wasn't.

Q Can you tell me what remained to be painted?

A The first floor, two or three stairways, and the basement.

Q All right.

Can you estimate how long it would take you and three other employees to complete this work, working at your usual pace?

A Between a month and two months.

MR. EDELMAN: I have no further questions of the witness, Your Honor.

JUDGE WEIL: Mr. Feinstein.

CROSS EXAMINATION

Q (By Mr. Feinstein) Mr. Gonzales, at any time, while you were working for Prote, did anybody from Prote tell you that if you belonged to the Union, you would be laid off?

A I don't remember that.

Q At any time after you were laid off, did anybody from Prote tell you that if you did not belong to the

Union, they would have more work for you?

A No. I don't remember that.

Q At any time, did Mr. Prote question you about your Union membership?

A No.

MR. FEINSTEIN: No further questions.

MR. EDELMAN: Your Honor, at this time, I have two witnesses left to call.

JUDGE WEIL: Are you through with this one?

MR. EDELMAN: I am, I'm sorry.

JUDGE WEIL: Thank you. You may step down.

(Whereupon, this witness was excused.)

MR. EDELMAN: One witness is a Union representative, Frank Jaume. I expect that he will be here tomorrow.

The other witness is an employee, Felipe Beior, B-E-I-R-O.

It's my understanding that he has been deported, and is in Spain.

Obviously, we are not going to request a postponement of the trial to get Mr. Beiro back from Spain.

In view of that, we would have no choice but to withdraw those allegations that allege the 8(a)(4)

aspects of this case.

The way they put them in the Complaint, I'll have to check out, it's in two parts, in two allegations. I want to be accurate.

It would be "Twelve" we would have to delete. That would be it.

JUDGE WEIL: You want to delete "Twelve" in its entirety?

MR. EDELMAN: Let me just check to be sure.

That's correct.

JUDGE WEIL: Any objection?

MR. FEINSTEIN: It's my understanding that Paragraph 12 of the Complaint will be omitted completely?

JUDGE WEIL: Gone from the Complaint.

MR. FEINSTEIN: No objection. Fine.

JUDGE WEIL: I didn't think you would have.

MR. EDELMAN: So, I would like to rest my case, with the stipulation that I be permitted to call Frank Jaume.

Although as I look at the hour, it may be that perhaps the best thing might be to adjourn until tomorrow morning.

MR. FEINSTEIN: Well, can we --

Would you take some motions at this time?

JUDGE WEIL: Tell me what Mr. Frank Jaume --

Spell his name, please.

MR. EDELMAN: J-A-U-M-E, I believe.

JUDGE WEIL: Tell me what you want him to testify.

MR. EDELMAN: Mr. Jaume would corroborate Mr. Topp and Mr. Blumberg.

MR. FEINSTEIN: I'll so stipulate, Your Honor, that if he testified without conceding the truth thereof, he would testify essentially the same as Mr. Topp and Mr. Blumberg.

MR. EDELMAN: I couldn't go along with that stipulation there, because we have certain credibility factors that have to be considered in connection with conversations between the Union agents and Mr. Prote.

Unless you're prepared to concede the truth of the statement, I would not --

MR. FEINSTEIN: Of course not.

MR. EDELMAN: In that case, I prefer to call him, because it may be the Trial Examiner will be faced with credibility problems, and it may be he would like to see the demeanor of this witness.

JUDGE WEIL: He will add nothing to the accumulation of evidence, I take it?

MR. EDELMAN: No, he would not.

JUDGE WEIL: With Respondent's acquiescence,

RENUMBERED PAGES 190 thru 209 DO NOT EXIST

I propose this.

At the close of -- you rest, and at the close of Respondent's case, you deem it advisable, you might call him, as sort of a rebuttal witness, although it's not proper rebuttal.

Would that meet with your approval, Counsel?

MR. FEINSTEIN: Absolutely.

MR. EDELMAN: With that understanding --

JUDGE WEIL: I would not otherwise permit you to call him in rebuttal, but with the acquiescence of Respondent, I would.

Under those circumstances, you're prepared to rest?

MR. EDELMAN: Correct.

JUDGE WEIL: I'll be happy to entertain any motions now.

MR. FEINSTEIN: I call the Court's attention to Paragraph 10, 11 -- 10 and 11 of the Complaint, and these state essentially that Mr. Demetriades threatened the employees who testified here with termination of their work, and other reprisals, if they remained members of the Union.

It also says that Mr. Demetriades interrogated these employees about their membership and

activities in behalf of the Union.

Now, I specifically asked each and everyone of these witnesses if they had any conversations at all with Mr. Demetriades or any official of Prote, wherein they were threatened, or were told that they'd be laid off, if they joined the Union, and everyone of the employees said they were never questioned by Mr. Prote, or Mr. Demetriades, they were never threatened by anybody from Prote about joining the Union.

I submit, therefore, Your Honor, based upon the Petitioner's own case, he has not proved the allegations of Paragraph "Tenth" and "Eleventh", which are essential to this Complaint, and I ask that it be dismissed.

JUDGE WEIL: Are you referring in those paragraphs, 10 and 11, General Counsel, to the testimony of Mr. Pantzos?

MR. EDELMAN: Pantzos?

JUDGE WEIL: Pantzos.

MR. EDELMAN: With respect to interrogation and threats, I would be.

JUDGE WEIL: To the mafioso bit?

MR. EDELMAN: Correct.

JUDGE WEIL: All right.

I'm going to deny your motion at this time,

because for purposes of this motion, I have to rely on the testimony offered by the General Counsel, whatever inference it will bear, and it would bear an inference of a threat or of a -- of an interrogation.

If I choose, in deciding this thing, to make that inference.

So, I, at this stage of the game, I cannot, as I see the Rules, I can't grant your motion.

MR. FEINSTEIN: That's as to Pantzos.

What about the other employees?

There's been no evidence as regards the other employees.

JUDGE WEIL: I know.

So, the only possible threat, and the only possible interrogation, is of one employee, along?

MR. EDELMAN: That is correct.

JUDGE WEIL: So, I shall read employees in the singular, in both of those paragraphs.

MR. FEINSTEIN: Well then, Your Honor, --

JUDGE WEIL: The Board, I think, has an inference that a threatened employee is a threat to employees, and I know many occasions in which the Board has found such an allegation supported by the single statement.

Now, with regard to going forward, Counselor,

do you want to go forward now?

I note it's about twenty minutes to five.

Or do you want to go forward in the morning?

MR. FEINSTEIN: I'm prepared to go forward, Your Honor, but I'd rather not, if you want to adjourn at this time.

JUDGE WEIL: It doesn't matter to me, one way or the other.

How long do you think your case is?

MR. FEINSTEIN: I have three witnesses, Judge.

I hope --

What time would we start tomorrow?

JUDGE WEIL: I plan to start at 9:30.

MR. FEINSTEIN: I would say that my case should be finished by lunchtime.

JUDGE WEIL: Very well.

Let's go over until the morning, then.

MR. FEINSTEIN: Fine.

JUDGE WEIL: We'll stand adjourned until 9:30 tomorrow morning.

(Whereupon, the hearing was adjourned at 4:35 o'clock P. M.)

CERTIFICATE

This is to certify that the attached proceedings before the NATIONAL LABOR RELATIONS BOARD for the 29th REGION in the matter of:

PROTE CONTRACTING CORP.

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

C S A REPORTING CORPORATION
OFFICIAL REPORTERS

By Patrick Lee
Field Reporter

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 29

----------x

IN THE MATTER OF:

PROTE CONTRACTING CORP.,

Respondent,

-and-

JUAN POMBO, an individual,

Charging Party

-and-

DISTRICT COUNCIL NO. 9,

INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, AFL-CIO.

Party in Interest

Case Nos. 29-CA-3704-3715-3786

----------x

16 Court St.
Brooklyn, N.Y.
May 8, 1974

The above-entitled matter came on for further hearing pursuant to adjournment, at 10:35 a.m.

BEFORE: PAUL E. WEIL, Administrative Law Judge

APPEARANCES:

HOWARD EDELMAN, ESQ., Counsel for the General Counsel

SHELDON FEINSTEIN, ESQ., of Counsel, Klein & Feinstein, Esqs., 90-14 Elmhurst Ave., Jackson Heights, Queens, appearing for the respondent.

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PROCEEDINGS

JUDGE WEIL: The hearing will be in order.

MR. FEINSTEIN: Your Honor, if I may, I would like to renew my argument that I made at the close of yesterday's testimony.

Paragraph 10 of the complaint is very specific. It says that Mr.Demetriades threatened its employees with this charge or other reprisals if they became or remained members of the union.

Paragraph 11 says that Mr. Demetriades interrogated employees concerning their membership in the union.

Now, every man, except Mr. Pantzos -- and I'll get to him a little bit later -- specifically said Mr. Demetriades never talked to them about the union, they were never threatened, they were never questioned about the union.

In fact, when they were laid off at Newtown High School other union employees still remained on the job.

Now, Mr. Pantzos testified that he went with Alfonso to Prote's office about a tax problem, and he saw Mr. Demetriades there, and he testified -- and I wrote down almost his exact words -- that Mr. Demetrades said to him, "Are you a Moffioso, because people in the union are Moffiosos?"

And Pantzos said, "I don't know."

And then Mr. Demetriades said to him, "Why did you come here?"

And he said, "I came because of a tax problem."

And them Mr. Demetriades said something to the effect of, "Mother of Christ, do you want me to rob you?"

And Mr. Demetriades said, "I have no more work."

Now, he also testified that he worked after the other men were laid off; he was laid off on February 4th, and the other men were laid off on January the 25th.

I asked him specifically, I said,"Do you know why you were laid off?"

He said,"Yes, because of a tax problem."

I asked him if anybody every told him he would be laid off if he joined a union.

He, also, said -- well, Mr. Eledman re-examined him and he said the union told him to file the charges against the contractor.

Now, taking Mr. Pantzos testimony and giving it full credence, there's nothing there about a threat to fire him if he joins a union.

That's what paragraph 10 is all about, that he will be fired if he joins the union.

Paragraph 11 says he was interrogated about his union.

There's nothing in his testimony that he was ever

interrogated about the union.

If we believe Mr. Pantzos that Mr. Demetriades said,"Are you a Moffioso, because members of the union are Moffioso?"

That's more in the way of a comment. Even if it's true that Mr. Demetriades did say that, maybe Mr. Demetriades' opinion is that the union is Moffioso, but that's a comment.

He didn't say I'm firing you because you joined a union.

It's his opinion and it's a comment as to why did you join the union.

He didn't say I'm going to fire you because you joined a union. He didn't question him about his union activities.

In fact, the testimony was that he was recalled, that he was told that Prote had more work for him but he never contacted Prote to find out about this.

I submit that the Board has completely failed to substantiate the allegations in paragraph 10 and paragraph 11 as to any man who testified here.

I ask for a dismissal of the complaint, your Honor.

JUDGE WEIL: I'll tender your motion for the same reason I gave you yesterday.

MR. FEINSTEIN: Well, I except, your Honor.

JUDGE WEIL: Of course.

MR. FEINSTEIN: I'll call Mr. Pisciotta.

Whereupon,

JERRY PISCIOTTA,

was called as a qitness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEINSTEIN:

Q What is your full name?

A Jerry Pisciotta.

Q Mr. Pisciotta, are you employed by Prote Contracting Corp?

A Yes.

Q In what capacity?

A Superintendent in charge of construction.

Q And do you work at any particular job?

A No.

I run every job -- I go every job we have, and I check the work going on there and how it's going on.

Q So you're the over-all foreman of the job --

A That's right.

Q -- is that correct?

A That's right.

Q And do you work directly under Mr. Demetriades?

A I do.

Q And how long have you been employed by Prote?

A A year.

Q And how long have you been in the construction business?

A 40 years.

Q And you're familiar with practices in the construction trade?

A Yes.

Q Now, are you familiar with the job that Prote was performing at P.S. 165?

A I am.

Q And who was the foreman of that job?

A Jimmy.

Q Is that the gentleman sitting in the first row here?

(Indicating.)

A That's right.

Q And did you visit that job site from time to time?

A Every day.

Q And do you know the men that were working there?

A Yes.

Q Who was working there?

A Yes.

Q Who was working there?

A Pantzos, Castro and Jimmy.

Q And prior to January -- well, withdrawn.

Were you aware in January that these men, other than Jimmy, had signed union cards?

A Yes.

Q How did you find that out?

A Through the grape vine. They talked about it. I heard about it through that.

Q Did you received any instructions from Mr. Demetriades or any other officer of Prote to lay these men off --

A Never.

Q -- because they joined the union?

A Never.

Q Did Mr. Demetriades ever say anything to you adversely about the union?

A No.

Q And were these men laid off from 165 on or about January 25th?

A Yes.

Q And what was the status of the job at that time?

A It was completed outside of punch list.

Q What do you mean by a punch list?

A Well, touch ups here and there that the inspector will check out to see.

And that's -- well, they know what a punch list actually is.

Q Right.

Since January 25th, has Prote done any further painting work at that school?

A No.

Q Has any man been there for any reason whatsoever to do any painting --

A No.

Q -- work?

A No.

Q What percentage of that work is now complete, in your estimation?

A 99 percent, 99 1/2 percent, I would say.

Q And who made the decision to lay the men off on January 25th?

A The foreman tells me that the work is completed.

I come back and talk it over with the boss. We try to shift men over from job to job if we can.

If we can't, we just --

Q And the foreman of that job is Jimmy?

A That's right.

Q Is he the one who told you the work was completed?

A That's right.

Q And the men would have to be laid off?

A Yes.

Q And they were laid off; is that correct?

A Yes.

Q Now, are you familiar wit the job at Newtown High School?

A I am.

Q Who was the foreman at that job?

A Alfonso Castro.

Q And how many men worked on that job?

A Nine.

Q Did that include Alfonso?

A Yes.

Q And were you aware of the fact that the men that worked there had signed union cards?

A Yes.

Q And were you aware of this fact before January 5th?

A Yes.

Q And did you have any conversation with Mr. Demetriades concerning this?

A No, no.

Q At any time did Mr. Demetriades or any other officer of Prote ask you to lay off the men because of the union?

A Never.

Q Did Mr. Demetriades ever say anything to you

adversely about these particular men joining the union?

A No, not -- there was no reason for it.

Q Did you ever tell Alfonso to lay off the men because of union activity?

A No.

Q No?

A No.

Q Are you a union man yourself, sir?

A Yes.

Q Were some of these men laid off on January 25th?

A Yes.

Q And who made the decision to lay these men off?

A The foreman tells me they haven't got that much more work, what they have is -- he tells me how many men he needs, and that's what was left.

Q And did he tell you how many men he needs?

A Yes.

Q How many men did he tell you he needed?

A Four men.

Q How much work was left to be done on January 25th at Newtown High School?

A Well, there was the auditorium, some hallways, the lunch room.

That's about it.

Q What percentage of the work would you say was

compete on January 25th?

A 75 percent to 80 percent.

Q And would it be reasonable to expect to have eight men working after January 25th on that job?

A No.

Q No?

A No.

Q How many men were necessary to complete that work?

A Four.

And at that, we were squeezing, putting extra men actually.

Q And, sir, you've been in the construction business 40 years; is that correct?

A Right.

Q And when a job is running, coming close to completion, is it the usual custom to lay men off?

A Definitely.

Q Is this a well-known fact in the construction industry?

A Definitely.

Q Is it done on almost every job that you do?

A Every job.

Q And were these men laid off, sir, because the job was coming to a completion or because they joined the union?

A The union didn't have nothing to do with this.

I wasn't involved with that there. The job was closed, finished.

That was it.

When the foreman tells me he has no more work for them, I take it and go in and talk to the boss.

I say, "Chief, have we got any other work?"

He said, "That's it. That's the last."

In fact, that was the last job we done.

Q On January the 25th, did Prote have any other painting jobs going?

A No.

MR. FEINSTEIN: No other questions.

JUDGE WEIL: Mr. Edelman.

CROSS EXAMINATION

BY MR. EDELMAN:

Q You're not an officer of Prote --

A No.

Q -- Contracting, are you?

A No.

Q You wouldn't negotiate any contracts --

A No.

Q -- with a labor organization or any other contracts?

A No.

Q You wouldn't negotiate any subcontracts, I take it?

A Subcontracts?

Q Yes.

A No, I wouldn't.

Q In fact, you are an employee of Prote?

A That's right.

Q Although a supervisory employee?

A Yes.

Q And you are a salaried employee--

A That's right.

Q -- I take it?

A That's right.

Q You are not paid an hourly week of -- strike that.

You're not paid by an hourly rate, are you?

A No; salary.

Q And you do not get paid for overtime; is that correct?

A I don't get paid for overtime.

Q Now, you testified about the practice in the trade when a job is completed and there is no other work, and that is to lay the people off.

Is that correct?

A That's right.

Q And it would be equally correct, would it not, that where one job is completed and there is another job, you just shift the men over to another job if it's

available?

A If I can use them, yes.

Q In other words, if you have one job that's complete and you are ready to -- or, there's no need for two or three or four painters, whatever the case may be, and you have another job that's opening up or in the process of being worked on and you can use the men there, you would transfer them over there?

A I would, yes.

Q So that if other work were available which had been subcontracted out, you would not have had any part in making any of these subcontracts?

A No.

If something is subcontracted, I have nothing to do with that.

That's not under my jurisdiction anymore.

Q And if there were any work that was subcontracted out, the reasons for the subcontracting would not be known to you; is that correct?

A There is no reason for that.

Q In other words, you're not aware of high management decisions in connection with whether or not Prote is going to do the work or whether he's going to subcontract it?

A No.

Actually in the office we discuss these things being that I'm in charge of the over-all construction, we discuss these things being that I'm in charge of the over-all construction, we discuss these things.

Now, as for giving jobs out, I -- there's no reason for us to do it because we haven't got the crew.

Q If a decsion were made to subcontract a job out, that would be Mr. Prote's decision, wouldn't it?

A That's right.

MR. EDELMAN: No further questions.

MR. FEINSTEIN: Your Honor, I forgot to ask something.

REDIRECT EXAMINATION

BY MR. FEINSTEIN:

Q Do you have a desk at 313 Kingsland Avenue?

A That's right, right next to Mr. Pantzos.

Q About how far away is your desk?

A I would say right there.

(Indicating.)

Q So your desk would be where you're sitting and Mr. Demetriades' desk would be here?

(Indicating.)

Is that correct?

A That's right.

Q That's right.

Q And were you in the office on February 4, 1974 when Pantzos came in with Alfonso?

A I'm there every evening.

Q And about what time did he come in?

A 4:00 o'clock, 4:30, something like that.

A And were you present when he had a conversation with Mr. Demetriades?

A Yes.

Q And did you listen to that conversation?

A They were speaking Greek.

Q Do you understand Greek?

A No.

Q Now, was that conversation in an excited manner or a calm manner or what?

A No; it's between an employee and an employer actually. The same talking as we're talking now.

They were discussing things. Voices were never raised, so I didn't have any reason to --

Q Okay.

Did you during your sitting there -- were you there during the entire conversation?

A The entire conversation, yes.

I'm there all the time.

Q Did you at any time hear Mr. Demetriades use the words Mafia or Maffioso?

A No.

Q Did you hear Mr. Pantzos get angry at any time?

A No.

They were just talking, discussing things calmly.

I mean, I didn't see anything.

Q If Mr. Demetriades used those words, would you have heard it?

A Of course I would.

MR. FEINSTEIN: No other questions.

RECROSS EXAMINATION

BY MR. EDELMAN:

Q What were you doing at the time that this conversation took place?

A I got a desk like this, and a desk something similar to that.

(Indicating.)

I'm getting work lined up for the following day.

Q You were working?

A Well, writing actually.

Q And --

A Just writing while he was talking.

Q Right.

Now, in connection with your work, Mr. Pisciotta, did you stop your work when Mr. Demetriades and Mr. Pantzos had their conversation?

A There was no reason for me to because they were just talking like we are now.

Q So you didn't stop your work?

A No.

Q As a matter of fact, you paid attention to the work that you were doing?

A Yes.

They were talking in Greek.

One ear open to -- just like -- when you are writing, you listen to things that are going on.

Q I see.

But as you say, it was all Greek to you; is that right?

A Yes.

(Laughter.)

Q So you really didn't pay much attention to a conversation which you couldn't understand --

A No.

Q -- and which was taking place in a normal tone of voice; is that right?

A That's right.

MR. EDELMAN: No further questions.

MR. FEINSTEIN: I have nothing further, your Honor.

JUDGE WEIL: Thank you.

You may step down.

THE WITNESS: Thank you.

(Witness excused.)

MR. FEINSTEIN: Mr. Satchell, please.

Whereupon,

JAMES SATCHELL,

was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEINSTEIN:

Q What is your full name?

A James Satchell.

JUDGE WEIL: Mr. Satchell, will you keep your voice up. Everybody has to be able to hear you.

THE WITNESS: Yes, sir.

BY MR. FEINSTEIN:

Q Mr. Satchell, are you employed by Prote Contracting Corp?

A I am.

Q In what capacity?

A Foreman.

Q And how long have you been employed by Prote?

A About 20 years.

Q And how long have you been a painter?

A Oh, 20 years.

Q And you're familiar with the practices in the trade; is that correct?

A I am.

Q And were you employed at 165 for Prote?

A I was.

Q Were you the foreman of that job?

A I was.

Q How many men did you have under you?

A Two.

Q Two?

A Yes.

Q And on or about -- well, withdrawn.

Were you aware sometime in December or January that representatives of the union came and visited the site?

A Yes.

Q Now, these men that worked for you, did they speak English or Spanish?

A Spanish.

Q They didn't speak any English at all; is that correct?

A Yes.

Q Did you know that these people were from the union?

A Yes.

Q And did you have any conversations with Mr. Demetriades that these people came --

A Yes.

Q -- to the school?

A Yes.

Q And did Mr. Demetriades say anything bad about the union?

A No.

Q Did he ever tell you to fire the men --

A No.

Q -- because of the union?

A No.

Q Were you aware that these men signed union cards?

A I got it from one of those men.

Q One of those men?

A Yes.

Q And on January 25th, were these men laid off?

A Yes.

Q Who made the decision to lay these men off?

A I called the boss. I told him I was finishing the job on that Friday afternoon, to send a truck in, move all of the things out.

Everything was loaded and sent off.

Then around 2:30 o'clock, the man brought me two

envelopes.

Q Who brought you two envelopes?

A Jerry.

Q Yes.

What was in those envelopes?

A The pay for five days and the pay for one day.

Q And the pay for one day was because they were being laid off; is that right?

A Yes, that's right.

Q And did you tell the men they were laid off?

A Yes.

Q Did a truck from Brote come and move all of the material out of the building?

A Before they got their money, the truck was loaded and gone.

Q So at that time, there was no more paints, no more scaffolds and no more brushes at the school; is that correct?

A There was nothing there.

Q And why were these men laid off?

A Finished the job, completed.

Q Was the --

A Only kickplates on doors was to be done.

Q Was the work finished as far as you were concerned?

A 99 percent finished.

Q And have you ever been back to do any further work at that school?

A Never.

Q Has any man been back from Prote to do any further work there?

A Not as far as I know.

Q As far as you know, is all of the work finished?

A Yes, except the kickplates.

Q Except the kickplates?

A Yes.

Q How much work is that?

A You have to do it on weekends, or Saturdays.

Q How mucy work is that?

A About a day.

Q One day for one man?

A Yes.

It's a small school.

Q Now, in your experience in the painting trade, is it usual to lay men off when the job comes to a finish?

A That's right.

Q And is this what you did at this school?

A Yes.

Q And did you do anything unusual at this school?

A No.

Q Now, when you finished that job, where did you go to work after that?

A Newtown.

Q And how many men were working at Newtown when you got there?

A Three besides myself.

Q Four all together?

A Yes.

Q So Alfonso was the foreman before and now when you went there you became the foreman?

A Yes.

Q Okay.

How much work was left to do -- withdrawn.

Had you worked at Newtown before this?

A Yes.

Q And you wroked at Newtown for a while and then you went to 165?

A That's right.

Q And then when 165 was finished, you went back to Newtown; is that correct?

A That's correct.

Q Now, when you went back to Newtwon, that was the next working day after January 25th; is that right?

A That's right.

Q And how much work was left to be done there?

A Well, 75 percent of the work was done.

Q And how many men would you say was reasonable to finish off the work?

A Only four, because only two men can work on a scaffold and I only needed four men there.

Q Would it be reasonable to have eight or nine men employed for that job?

A The assistant principal wouldn't allow you no more workers.

Q In other words, you only had a certain amount of area to work in; is that correct?

A That's correct.

Q And you could only use four men for that area?

A That's correct.

Q And eventually when that job came to a close, those men were laid off; is that right?

A That's right.

Q Did Mr. Demetriades ever tell you to fire the men at Newtwon because of union activity?

A I never fired a man.

Q Eventually they were laid off at Newtown?

A They were laid off.

Q Why were they laid off?

A Because the work was completed in about 75 percent.

Q And that's the only reason they were laid off;

is that right?

A That's all I know.

MR. FEINSTEIN: No other questions.

CROSS EXAMINATION

BY MR. EDELMAN:

Q Mr. Satchell, it is true, is it not, that during the course of the past year, the employees would complete one job and they would be sent to another job?

A If we had work to do.

Q And isn't it true that you had work to do --

A No.

Q Isn't it true that the gentleman sitting here worked on a number of different schools -- 165 and Newtown and other schools in Queens?

A Yes, but when we finish a school, we don't go back to that school.

Q When you finish one school you go on to another school?

A Yes.

Q And you continue on going to different schools?

A Yes.

Q And the employees who are working on one school, when that's finished they go to another school; is that correct?

A That's provided if they have space for the men

to work at the next school.

Q That's right.

So, in other words, if you have jobs available, if you have four men working at one school and another school opens up and you need four men there, you take the four men that are working at the school you complete work on and you move them over to the school that work is to be started on; isn't that correct?

A That's correct.

But I think you're wrong there because when we finished this school, they laid off some men the same day so I was the only man who went to Newtown school.

Q I'm not talking about this school, I'm talking about your activities during the course of 63 before finishing the Newtown school and before finishing the 165 school.

You worked on other schools during the year; isn't that right?

A 63?

Q 73.

A Yes.

Q Would you say 10 or 15 schools that you worked on?

A In my lifetime?

Q No, no.

I mean during the course of 1973-1972.

A Probably three.

Q How many schools?

A Two or three.

Q That you worked on?

A Yes.

Q Other people in Prote worked on other schools; is that correct?

A That's correct.

Q And the people who would be working on the other schools, when they would be completed, they would be transferred to new schools where the jobs were open; is that correct?

A That's correct.

Q I see.

Now, Mr. Satchell, with respect to the Newtown school, would it be -- would it be fair to say that as of about March 18th, that the work that you had left at the Newtown High School included the painting of one staircase, one corridor and the teachers' cafeteria?

A Yes.

Q What work did you have to paint as of January 25th, or what work had not been completed?

A We painted the teachers' cafeteria; we painted the auditorium and two entrances going out and two pieces of staircases.

Q This is the work that was odne between January 25th --

A The last work we done.

Q -- and March 18th?

A Tha'ts the last work we done.

Q Well, as of January 25th when you laid the employees off --

A This work was done after January 25th.

Q After January 25th?

A After January the 25th.

Q Okay.

Very well.

MR. EDELMAN: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. FEINSTEIN:

Q Mr. Satchell, during your course of employment with Prote, were there times when you finished one paint job and you had no other work for men and they were just laid off?

A Yes.

Q And that happened more than once; is that right?

A Yes.

Q And that's before these particular schools?

A Yes.

Q All right.

MR. FEINSTEIN: No other questions.

JUDGE WEIL: Mr. Edelman, anything further?

MR. EDELMAN: I have no further questions, your Honor.

JUDGE WEIL: I'm curious, Mr. Satchell.

What ever happened to the kickplates at 165?

THE WITNESS: They're still left undone.

JUDGE WEIL: Why?

THE WITNESS: Because they're holding them out until the school is closed and go back there and finish it. You can't put your hand on the black, it messes up the students.

We left it undone until a later date.

JUDGE WEIL: Until school closes for the summer?

THE WITNESS: Until school closes, then we go back and fix up the kickplate.

This is the black that you put your hands on, and they won't allow you to do it while school is in session.

JUDGE WEIL: What is left to be done now at Newtown?

THE WITNESS: What's left to be done at Newtown?

JUDGE WEIL: Yes.

THE WITNESS: There's nothing for me to do.

The only thing is to do is the plaster there doing the plaster work.

That's all that's left there to be done, one little room, is the office to be done.

The plaster is there. So it will be at least five or ten days that he will be there.

It's one man job, one day probably.

JUDGE WEIL: Has any work been done there since March?

THE WITNESS: Since March?

JUDGE WEIL: At Newtown, I mean.

THE WITNESS: Yes.

JUDGE WEIL: What work has been done since March?

THE WITNESS: The auditorium, a few places in the corridor, the two entrances, as I said, and the kickplates to the doors.

JUDGE WEIL: You did the kickplates there?

THE WITNESS: Yes.

JUDGE WEIL: I see.

Thank you.

I have nothing else.

Anything else, gentlemen?

MR. EDELMAN: I have nothing further.

MR. FEINSTEIN: No further questions.

JUDGE WEIL: You may step down, Mr. Satchell.

(Witness excused.)

MR. FEINSTEIN: I call Mr. Demetriades.

Whereupon,

THEOCLITOS DEMETRIADES,

was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FEINSTEIN:

Q What is your full name?

A Theoclitos Demetriades.

Q Mr. Demetriades, are you an officer of Prote Contracting Corp?

A Yes.

Q What office do you hold?

A The president of the corporation.

Q You're the president?

A Yes.

Q Did Prote contracting receive a contract from the Board of Education to do painting work at P.S. 165?

A Yes.

Q And did you get that job pursuant to a bid that you submitted?

A What's that?

Q Did you submit a bid to the Board of Education --

A Yes.

Q What was the total amount of that contract?

A $39,870.

Q And was this all painting work to be done?

A According to the breakdown submitted to the Board of Ed, we --

Q Well, did you have other work besides painting work?

A Yes, yes.

Q Okay.

Are you required under your contract with the Board of Ed to submit a breakdown of how you arrive at your price?

A That's right.

Q And did you submit a breakdown?

A Yes.

Q And was that breakdown accepted by the Board of Ed?

A Yes.

Q And is this the breakdown -- I take this from the Board of Ed records, your Honor.

Is this the breakdown that you submitted to the Board of Education?

(Handing.)

A Yes, I have a copy.

Q All right.

MR. FEINSTEIN: I offer this in evidence, your

Honor.

JUDGE WEIL: Mark it as Respondent's Exhibit 1 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 1 for identification, as of today's date.)

JUDGE WEIL: Any objection, Mr. Edelman?

MR. EDELMAN: No objection, your Honor.

JUDGE WEIL: It's received.

(Whereupon, the above-mentioned document was received into evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, Mr. Demetriades, from time to time did you submit payment applications to the Board of Education?

A Yes.

Q All right.

And in your payment application, did you detail what work was finished and how much of it was finished?

A Yes.

Q And did you submit a payment application on or about January 10, 1974?

A January 10th, yes.

Q And I show you a document from the Board of

Education files and I ask you if this is the payment application you submitted on or about --

A Yes, I got the copy here exactly the same.

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Mark it as Responden'ts No. 2 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 2 for identification, as of today's date.

MR. EDELMAN: If I may, I would just like to ask one or two questions on voir dire?

JUDGE WEIL: You may.

VOIR DIRE EXAMINATION

BY MR. EDELMAN:

Q Mr. Demetriades, did you -- did you type out these figures?

A Yes.

Q Is this your -- it's Board of Education form, but you filled it out?

A Yes.

MR. EDELMAN: I have no objection, your Honor.

JUDGE WEIL: It's received.

(Whereupon, the above-mentioned document was received into evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, Mr. Demetriades, after you submit a payment breakdown, does the Board of Education go out and inspect the work?

A Yes.

Q And do they then apporve or disapprove the application for payment?

A They --

Q Is that right?

A Yes.

Q And this application, I'll point out to his Honor, has been approved on January 24, 1974 by a Vincent O'Connell, superviosr of school maintenance.

Is that correct?

A And this is the area manager and the G.I., three signatures.

Q Right.

Okay.

MR. FEINSTEIN: I'll also point out to the Court, if the Court pleases -- may I have your copy of this payment?

THE WITNESS: Yes.

(Handing.)

MR. FEINSTEIN: I point out to the Court, starting in paragraph 2.10 where it says interior painting, it says there spray A.C. plaster tiels -- which I submit means spray acoustical plaster tile.

The material cost is $300 and the labor cost is $2,700, and the total labor-material is -- which it says--

THE WITNESS: 3,000.

MR. FEINSTEIN: Please.

-- total material and labor completed to date is $3,000.

On the breakdown we submitted to the Board for the total cost of this item, it's $3,000.

The next item is to paint the third, second and first floors, the total material and labor cost is $12,320.

The total coat to do that work, according to Respondent's Exhibit 1 is $12,320.

The basement, the total cost to do that work is $300.

In Respondent's Exhibit 1, his breakdown for total cost to do that work is $300.

The labor-material on the payment breakdown to do the stairs is $2,000.

On Respondent's Exhibit 1, which was submitted

on August 13, 1973 to the Board of Education, says that the total amount of work on the stairs is $2,000.

The varnish desks, the total amount to do that work is $1,000.

On Respondent's breakdown he claims $1,000.

Exterior painting, $5,000 on the payment breakdown.

On the application for payment, it's also $5,000 completed.

JUDGE WEIL: Counselor, you can go through them.

MR. FEINSTEIN: Okay.

I just wanted to make a point that the only work that hadn't been completed was refinishing of gym floors for $1,000.

BY MR. FEINSTEIN:

Q Now, Mr. Demetriades, on January 25th when these men were laid off, what was the status of the completion of work at P.S. 165?

A January 25, 1974, I have the completion of the job, and I have the punch list to complete the job.

Q When does the Board of Education give you a punch list?

A When the job has been 99 percent completed.

Q And you got such a punch list from the Board of Education?

A I have it, yes.

Q Now, prior to January 25th, had you known, Mr. Demetriades, that the men working at P.S. 165 had signed union cards?

A Yes.

Q And did you have any conversation with any men to try to induce them not to join the union?

A No.

Q Did you speak to Jimmy, your foreman at 165, and tell him to induce the men not to join the union?

A No.

Q At any time did you threaten any of the men at 165 because they joined a union?

A No.

Q Did you even question them about union activities?

A No.

Q Do you speak Spanish, sir?

A No.

Q Who made the decision to lay the men off on January 25th?

A The foreman makes the decision.

When there's no job, he reports to the office, to the superintendent, the superintendent talks to me, and we decide that the job is completed, so we lay off the men.

Q Now, on January the 25th, Mr. Demetriades, other than 165, what other painting jobs did Prote have working at that time?

A After January --

Q On January 25th.

A We have the Newtwon High School.

Q Did you have any other painting work at all?

A No.

Q Now, at Newtwon High School, Alfonso was the foreman; is that correct?

A Correct.

Q Now, how much was the total contract price with the Board of Education for Newtown High School?

A $65,462.

Q And was all of it painting or was there other work?

A No; it's almost -- two thirds other and the rest painting.

Q Okay.

Now, did you submit a breakdown to the Board of Education for the cost?

A Yes.

Q And is this the breakdown you submitted, sir?

(Handing.)

A Yes.

I have a copy.

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Mark it as Respondent's Exhibit 3 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 3 for identification, as of today's date.)

JUDGE WEIL: Any objection?

MR. EDELMAN: No objection, your Honor.

JUDGE WEIL: It's received.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q And from time to time did you submit payment applications to the Board of Education for work at Newtown?

A Every month.

Q And did you submit one on January 10, 1974?

A January 10th?

Q Yes.

I show you one and I ask you if this is what you submitted?

(Handing.)

A January 10, 1974, yes, that's the copy.

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Mark it as Respondent's Exhibit No. 4 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 4 for identification, as of today's date.)

JUDGE WEIL: Any objection?

MR. EDELMAN: No objection, your Honor.

JUDGE WEIL: It's received.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q And on March 20th, sir, did you submit another payment application on Newtown High School and is this the one that you submitted to the Board of Education?

(Handing.)

A March 20, 1974.

Q I see.

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Mark it as Respondent's Exhibit 5 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No.5 for identification, as of today's date.)

JUDGE WEIL: Any objection?

VOIR DIRE EXAMINATION

BY MR. EDELMAN:

Q Did you sign this form?

(Handing.)

A The payment is approved.

Q Is your signature supposed to be on this form?

Are you supposed to sign this form where --

A It's missing, also.

Q You didn't sign it?

A No.

Q You say payment was approved for this form?

A That's right.

Q Is that by Mr. -- I can't read his writing.

It looks like Talmy or something like that.

Let me just see if we have the same one.

A Mr. Marcarian.

Q I see S.S.M.

Okay.

MR. EDELMAN: I have no objection.

JUDGE WEIL: Have it marked Respondent's 5.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, was this March 20th payment you submitted to the Board of Education for this job?

A March --

Q 20th.

A The third payment, yes.

JUDGE WEIL: You said January before, didn't you?

MR. FEINSTEIN: The first one was January the 10th and the second one was March 20th.

BY MR. FEINSTEIN:

Q Was that the last one, sir?

A March 20th?

Q Yes.

A No.

I have another payment. This is the Newtown?

Q Yes.

A I have another payment which has been held -- I'm sorry.

That's the last one.

Q March 20th is the last one you submitted; is that correct?

A That's correct.

Q And that has been approved by the Board of Education?

A Yes.

Q Now, by looking at the payments of January the 10th, Mr. Demetriades, and comparing with March 20th, could you tell us, based upon these records, what work was uncompleted on January 10th, which was subsequently done between January 10th and March 20th?

A That was the cafeteria, the auditorium --

Q Where is the auditorium located?

A On the basement.

Q And on January 10th, did you ask for any payment on the basement?

A Yes.

Q Now, look at your -- January 10th payment, I'm talking about.

A January 10th?

Q Yes.

A No.

Q And did you ask for payment for the basement on March 20th?

A On March 10th?

Q March 20th.

A Yes.

Q And other than what you just testifed to, Mr. Demetriades, was there any other work left to be done on Newtwon after January 10th?

A January 10th?

Q Yes.

A YES.

Q What had to be done?

A We had the cafeteria, the main entrance; we had the auditorium and whatever is left over as you enter--we couldn't do the entrances because people going in and out.

Q And how many men were necessary to complete that work?

A We decided four men be enough.

Q And who made that decision?

A The foreman makes the decision.

Q And who was the foreman on that job?

A That was Alfonso Castro.

Q Were you on the job every single day?

A No.

Q Who had charge of the day-to-day operation of that school?

A Alfonso Castro.

Q And when Mr. Satchell was transferred there in January, did he have over-all charge?

A That's right.

Q And on Newtown High School on January 25th, some men were laid off and some were kept; is that correct?

A Yes.

Q Who made the decision which men to keep?

A Alfonso Castro made this decision.

Q Did he tell you which men he wanted to keep?

A Yes.

Q Did you change his decision in any way?

A No reason because he knows better than me.

Q Were you aware of the fact that the union had visited the job site at Newtown High School?

A Yes.

Q And that they spoke to the men?

A Yes.

Q Did you at any time tell Alfonso to fire the men because of their union activity?

A No.

Q Do you remember a conversation you had with Mr. Pantzos in your office on or about February 4th?

A Yes.

Q And what language did you speak to him in?

A As an employee to an employer.

Q And would you tell his Honor what he said to you and what you said to him?

A He come to me. He ask for social security because he thought that it was -- that the W-2 was less than it's supposed to be.

I opened my pay roll book. I look at the records.

I told him that I'm not going to steal from you, that's what the records call for, that's what the W-2 is I gave you.

He had three days. I gave him a check for three days.

I told him that when we have more work, I call you back.

Q And did you say anything to him about Moffioso?

A No, I didn't say that.

Q What did he say to you that when you told him that when you have more work you'll call him back?

A He just left. He didn't say anything.

Q And did you in fact call him back to work?

A Yes, I did.

Q When did you call him back to work?

A When he asked for unemployment.

Q And how did you call him back?

A I make a report to the labor department.

Whenever they have the questions, lack of work, if you have work, I says I have work.

Q And did he ever contact you about that work?

A No, he never contacted me.

Q What kind of work did you have for him?

A Scraping the floors of the gymnasium.

Q And he never contacted you after that; is that correct?

A No, he never did.

Q At that time, during his conversation with you on February the 4th, did you mention anything to him about the union?

A No.

Q At any time did you instruct any of your employees to fire any men because of their union activity?

A No, I didn't.

Q Now, Mr. Demetriades, on January 25th, did you have any other jobs with the Board of Education, any kind of jobs?

A I had 194.

Q Wait a minute.

Just yes or no, did you have any other jobs?

A Yes.

Q And these are jobs that you submitted bids for --

A Yes.

Q -- is that correct?

A Yes.

Q And did you have work at Sarah Hale High School?

A I have.

Q What kind of work was that, sir?

A General modernization.

Q And was there painting part of that, sir?

A Yes.

Q And on January 25th had painting work actually started?

A No, I can't -- I make a correction here.

January 21st, that's a Saturday; right?

Allow me to get my records.

On July 7th, July 18th --

Q Please, Mr. Demetriades, just answer my questions.

A Okay.

Q On January 25th, had the painting work started on Sarah Hale?

A It started already.

Q When did it start?

A It started -- I have July -- I'm sorry, September it started, sir.

Q The painting started in September?

A Yes.

JUDGE WEIL: Of what year? Of 1973?

BY MR. FEINSTEIN:

Q Of what year?

A 1973.

Q Who did the painting work at that job?

A Casual Painting.

Q Was that pursuant to a subcontract?

A Yes.

Q And was that a written subcontract?

A Yes.

Q And do you have that, sir?

A Yes.

Q May I see it, please?

A Yes.

(Handing.)

Q Well, you handed me two documents, sir.

A I had you the proposal I had before I signed --

Q Is this the contract, the document dated January 21, 1974?

A Correct, yes.

Q But you testified that the painting started in September.

A I don't recall that.

But as I see my shipments of paint, it's February the 4th.

Q Of what year?

A For 1974.

Q That's when the paint was delivered to the school?

A That's right.

Q So when you said before that the painting started in September, were you incorrect?

A That's incorrect, yes.

Q All right.

And is this the contract that you signed with Casual?

A That's right.

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Respondent's Exhibit 6.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 6 for identification, as of today's date.)

VOIR DIRE EXAMINATION

BY MR. EDELMAN:

Q Mr. Demetriades, this is dated January 21th; is that correct?

A January 21st.

Q 21st, I'm sorry.

And that was typed by your office pursuant to your instructions --

A That's right.

Q -- is that correct?

A That's right.

Q And this represents a sub for Sarah J. Hale; is that correct?

A Yes.

Q For work which was to start sometime after the subcontract, is that correct, because as you testified the paint did not arrive until February?

A I can explain.

Q Well, I just asked you.

Is that correct?

A No, that's not correct.

Q The work started before?

A Before, yes.

Q What work started before?

A The painting.

Q But you said the paint didn't arrive until February. How can you explain that?

A I'm sorry, make a correction.

Q So the painting didn't start until sometime in February?

A Sometime after January 21st.

Q So, in fact, you had a job at Sarah J. Hale High School to do as of January 20th, and on January 21st you subcontracted the job to somebody else?

A Yes.

Q And the work started in February?

A Yes.

But I had a proposal --

MR. FEINSTEIN: Wait.

Just answer the questions.

A Yes.

MR. EDELMAN: Fine.

I have no objection to the document, your Honor.

JUDGE WEIL: It's received.

Have it marked Respondent's 6 in evidence.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, Mr. Demetriades, did you make the decision to subcontract out this work before or after you learned that these men signed their union cards?

A That's before.

Q And when you submitted your bid, Mr. Demetriades, to the Board of Education, did you get a price for the painting from Casual.

A Yes.

Q And did you get that in writing?

A Yes.

Q And is this the proposal you received from Casual?

(Handing.)

A Yes.

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Mark it as Respondent's Exhibit 7.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 7 for identification, as of today's date.)

JUDGE WEIL: What's the date on that document?

MR. FEINSTEIN: July 18th.

JUDGE WEIL: Any objection, Mr. Edelman?

MR. EDELMAN: I have no objection, your Honor.

JUDGE WEIL: It is received as Respondent's Exhibit No. 7.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, are any of Prote's direct employees doing painting work at Sarah J. Hale?

A No.

Q Now, prior to giving out this work to Casual, had Prote in the past, say in 1972, ever subcontracted work out to painters?

A Yes.

Q And how many times would you say Prote had subcontracted work out in 1972?

A I had three schools.

Q And what jobs did you subcontract out to paint in 1972?

A Would you repeat, please?

Q What schools did you subcontract out the painting work in 1972?

A That was 168, Public School 163, Public School 145 and 107.

Q Now, did you also, in January of 1974, have a contract with the Board of Education for work at P.S. 194?

A Yes.

Q And what kind of work is that?

A Modernization.

Q When did you get the go-ahead signal from the controller to start that work?

A December 6, 1973.

Q And is that an official notification from the controller?

A Yes.

Q May I see it, please?

A Yes.

(Handing.)

MR. EDELMAN: In connection with what school is this?

MR. FEINSTEIN: 194.

I offer this in evidence, your Honor.

MR. EDELMAN: That isn't Sarah J. Hale, is it?

MR. FEINSTEIN: No.

JUDGE WEIL: Mark it as Respondent's Exhibit No 8 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 8 for identification, as of today's date.)

JUDGE WEIL: Any objection, Mr. Edelman?

MR. EDELMAN: I take it 194 was work to be done in 1973?

MR. FEINSTEIN: No.

That's dated December of 1973.

That's when he was supposed to start the work.

MR. EDELMAN: In December of 1973?

MR. FEINSTEIN: That's right.

MR. EDELMAN: Isn't that what I said, it's work to be done sometime in '73?

MR. FEINSTEIN: No, in '74.

He can't finish the job --

MR. EDELMAN: I'm sorry.

All right.

No objection, your Honor.

JUDGE WEIL: Have it marked Respondent's Exhibit S in evidence.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, you said that's a modernization job?

A Yes.

Q Is there painting work included in that?

A Yes.

Q Is there other work, also?

A Yes.

Q Has the painting started yet?

A No.

Q Is it ready for starting?

A No.

Q What other work has to be done first?

A The modernization, that is, electrical work, p;umbing work, kitchen equipment and --

Q When --

A -- modernization.

Q When do you think the painting work will be ready to start on that job?

A In the middle of July, I hope.

Q Now, did you also -- stirike that.

Mr. Demetriades, today, do you have work at P.S. 75, a contract at P.S. 75?

A Yes.

Q When was the controller's go-ahead on that?

A This is February 8, 1974.

Q And that was after the men were laid off at P.S. 165?

A Yes.

Q And after some of the men were laid off at Newtown; is that correct?

A Yes.

Q What kind of job is that, sir?

A This is miscellaneous replacements and painting and finishing.

Q And has the painting work started there yet?

A No.

Q When do you estimate the painting will be ready to proceed?

A At the end of June.

Q And what kind of owrk has to be done before the painting commences?

A Concrete pavement, resurface steps, brick replacements, brick-up windows, asphalt resurfacing, windows

to be replaced, new window poles, window sashes --

Q All right.

Mr. Demetriades, is it true that the painting is usually the last thing done in a modernization job?

A Of course, you know, after youchange the windows.

Q May I see the controller's go-ahead, please?

A Yes.

(Handing.)

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Respondent's 9 for identification.

(Whereupon, the above-mentioned document was received and marked as Respondent's Exhibit No. 9 for identification, as of today's date.)

MR. FEINSTEIN: I offer this in evidence, your Honor.

JUDGE WEIL: Any objection, Mr. Edelman?

MR. EDELMAN: No objection, your Honor.

JUDGE WEIL: Have it marked Respondent's Exhibit 9 into evidence.

(Whereupon, the above-mentioned document was received in evidence, as of today's date.)

BY MR. FEINSTEIN:

Q Now, other than the schools we just talked about, Sarah Hale, 194, 75 and 96 -- did I talk about -- what was the last one we talked about?

MR. EDELMAN: 75.

BY MR. FEINSTEIN:

Q Did you also have a job at 96?

A Yes.

Q And has the painting started on that job yet?

A No, sir.

Q What kind of job is that?

A Modernization job.

Q And when did you start that job?

A I have my first payment May 1st.

Q May 1st of what year?

A May 1, 1974.

Q Well, when did you start it, approximately?

A A month ago.

Q And has any painting work been done?

A No.

Q And when do you expect the painting work to start then?

A Also this job I expext middle of July.

Q All right.

Now, other than the jobs we spole about, namely,

Sarah Hale, 194, 75 and 96, did Prote have any other jobs in January or February or even today?

A No.

Q Now, in the past -- let's go back to 1970, 1971 and 1972.

Were there occasions, Mr. Demetriades, when Prote laid men off on one painting job and didn't have have any other painting jobs to put the men on?

A Yes.

Q Did that happen often?

A Yes.

Q And the fact that the men were laid off on Newtown and 165, is that anything that hasn't happened before?

That's happened before, the same type of situation; is that right?

A That's right.

Q It's not anything unusual; is that right?

A No, it's not unusual.

Q Since the men were laid off at Newtown and 165, has Prote itself with its own employees started any painting work?

A No, sir.

Q And is it correct to say, Mr. Demetriades, that the only painting work that is presently in progress is Sarah J. Hale, which is being done by a subcontractor?

A Yes.

MR. FEINSTEIN: I have no other questions.

CROSS EXAMINATION

BY MR. EDELMAN:

Q Mr. Demetriades, did you ever have a contract with District Council 9?

A Yes.

Q And that contract expired in 1968; is that correct?

A According to my recollection.

Q And it was as a result of correspondence initiated by you to the union that the contract terminated; is that correct?

A Yes.

MR. FEINSTEIN: Objection, your Honor.

We're going back to 1968.

I fail to see any relevancy to the charges in this proceeding.

MR. EDELMAN: I'm trying to establish --

JUDGE WEIL: Sustained.

BY MR. EDELMAN:

Q You have not had any contracts with District Council 9 since 1968; is that correct?

A I --

Q Other than a memorandum of understanding wherein you agreed to subcontract to union people in 1972?

A Correct.

Q Now, you are in a competitive business; is that correct?

A That's correct.

Q And you bid for your jobs; is that correct?

A Correct.

Q And there are others also bidding against you; is that correct.

A Yes.

Q And you bid to the Board of Education of the City of New York for these jobs; is that correct?

A Yes.

Q You work exclusively at Board of Education jobs?

A Not necessarily.

Q How much of your work would you say you do for the Board of Education?

A 95 percent up to today.

Q Okay.

So that your very existence depends on your being successful in bidding on Board of Education jobs?

A Yes.

Q I take it that the Board of Education would generally award the job to the lowest bidder?

A Correct.

Q One painter is generally as good as another painter,

it's the price that determines, within reason?

A Yes.

Q Now, in bidding and in figuring out what you can bid a job for, I take it that your labor cost is a facter that you have to consider?

A Correct.

Q And, therefore, if you can lower your labor cost, you can lower your bid?

MR. FEINSTEIN: Objection.

JUDGE WEIL: Aren't some things self-evident?

MR. EDELMAN: Well, I'd like to just get it on the record, your Honor. I'd like to have the --

JUDGE WEIL: Overruled.

Go ahead and answer it.

A Excuse me?

Q If you can lower your labor cost, you can lower your bid?

A If we have lower labor.

Q Now, if you had a contract with District Council 9, you would have to pay the prevailing wage rate; is that correct?

MR. FEINSTEIN: Objection, objection.

He has to pay the prevailing wage rate in any respect, your Honor, pursuant to law.

JUDGE WEIL: Well, I think that's agreed now

on the record.

BY MR. EDELMAN:

Q Well, the quesion is: Do you pay the prevailing wage rate?

MR. FEINSTEIN: Objection, objection.

It has nothing to do with this proceeding, your Honor.

JUDGE WEIL: Sustained.

MR. EDELMAN: Your Honor, if I may be heard on that.

I believe it does have something to do with this proceeding. It's our contention that he does not pay the prevailing wage rate and for that reason he can lower his bid and for that reason he can outbid other people.

It is also our contention that if he had a contract with District Council 9, he would not be able to escape the prevailing wage rate.

The fact that District Council 9 put pressure on him and tried to organize him and tried to force recognition, we claim is the action that motivated the lay off of these individuals precisely because he wanted to avoid paying the prevailing wage rate which he would have to pay if he had a contract with District Council 9.

I think it's relevant to explore whether or not

he does it.

It goes to the motivation.

JUDGE WEIL: I sustain the objection.

I find it immaterial.

Proceed.

BY MR. EDELMAN:

Q Mr. Demetriades, isn't it a fact that if you had a contract with the union, you would not be able to be as competitive and flexible with your bids as if you did not have a contract with the union, as is the case?

MR. FEINSTEIN: Objection.

He's trying to do indirectly, your Honor, what your Honor ruled he couldn't do directly.

JUDGE WEIL: I see that he is.

I was just debating with myself as to whether I would permit him to do so.

I guess I will.

I'll overrule the objection.

You may answer.

BY MR. EDELMAN:

Q Isn't it a fact, Mr. Demetriades, that without having a contract with the union, you are able to be more flexible in figuring your bids than you would be--

A No.

Q You say that that's not a fact?

A Not a fact.

Q It makes no difference to you whether you have a contract with the union or --

A No.

Q -- not?

A No.

Q Absolutely none?

A None.

Q Isn't it a fact, Mr. Demetriades, that in a conversation that you had with members of District Council 9 on January 18th, you pointed out -- and prior to that time, that is, sometime in September or October of 1973, you pointed out to them on both occasions that you couldn't join the union because then you could not be competitive with those who had -- with those contractors who were non-union contractors?

A I don't think we discussed this?

Q You never -- you never discussed that?

A We discussed, but that's not the reason to bid the job. It's not the reason.

Q Did you not tell the union men -- Mr. Blumberg, Mr. Jaume, Mr. Topp --on January 18th and again Mr. Blumberg sometime in September or October that you couldn't join because you couldn't be as competitive, and did you not ask them to first organize the other

non-union contractors and then you would join?

Isn't that a fact?

A Yes, I did that.

Q You did that?

A Yes.

Q Now, Mr. Demetriades, in 1973, beginning January 1973 to January 1, 1974, is it a fact that you did not subcontract out any work during that period of time?

A Say the dates again.

Q Between January 1, 1973, Mr. Demetriades, and January 1, 1974, is it not a fact that you did not subcontract out any work during that period?

A No.

Q You did not?

A I did not.

Q All right.

You did make your first subcontract in 197-- strike that, please.

The first subcontract you made beginning on January 1, 1973, was on January 21, 1974 to Sarah J. Hale School; is that correct?

A Correct.

Q Do you --

JUDGE WEIL: You mean for Sarah J. Hale School?

MR. EDELMAN: Yes, your Honor.

JUDGE WEIL: Yes.

BY MR. EDELMAN:

Q Now, that contract, the Sarah J. Hale contract, Mr. Demetriades, am I correct in stating that that contract involved 90 class room units?

A That doesn't involve any class room units.

Q Are you familiar with the Board of Education parlance as they use it in a specification?

A Of course.

Q And what is C.R.U. stand for?

A Class room units.

You have an amendment on that?

Q Now, are you familiar with the specification number on Sarah J. Hale School?

A Well, of course.

Q And is that specification number 488, 1972-1973?

A If it's written in there, it's a legal --

Q All right.

MR. EDELMAN: Let me have that marked as General Counsel's Exhibit No. 4 for identification.

(Whereupon, the above-mentioned document was received and marked as General Counsel's Exhibit No. 4 for identification. as of today's date.)

BY MR. EDELMAN:

Q Mr. Demetriades, I show you this document, which is marked in evidence --

MR. FEINSTEIN: It's not marked in evidence.

MR. EDELMAN: I'm sorry.

BY MR. EDELMAN:

Q -- marked for identification as G.C. 4 and ask you to look it over.

(Handing.)

A I'm not -- I never have this document myself.

Q You've never seen that document?

A No, I never saw it.

Q Have you ever seen one like this document for other schools?

Are you familiar with the form?

A No, no.

This is my specification and I go with this.

(Indicating.)

Q I see.

May I see that, please?

A Yes.

(Handing.)

All this class rooms are omitted from the contract.

Q What does the painting work involve in Sarah J. Hale School, according to your specifications?

A This, according to my specifications, is one gymnasium, cleaning -- steam cleaning -- carpentry, modernization of kitchen, modernization of general office, modernization of teachers' cafeteria.

Q Does that include any painting at all?

A It includes painting.

Q It includes painting?

A Yes.

Q And what rooms, what facilities do you have to paint?

A Mezzanine, corridors should be painted, including locker rooms for the gymnasium both for girls and boys; the gymnasium about 12 feet all around should be painted except the ceiling and walls which have to be steam cleaned.

Also, there are four shops to be modernized, reconstructed and painted.

Also, there is a dark room, four by four.

General office, if I didn't repeat myself.

Q I'm sorry, what was the last one?

A General office.

I think I mentioned that already.

Also, cafeteria ceiling.

This is the contract which amounts to $10,500.

Q For painting work?

A For painting work.

Q All right.

Does that contract also include painting of any previously-painted surfaces other than those that you have just set forth?

A We have the general paragraph on every contract, all previously-painted surfaces to be painted.

Q Would that include class rooms?

A Includes class rooms and everything that it is into the building.

Q I see.

A But we have amendments which they omit this --

Q Isn't it a fact that you ahd to paint class rooms as well as cafeterias?

A No, sir, omitted.

MR. EDELMAN: If I may have just a moment, your Honor?

JUDGE WEIL: Yes.

A (Continuing.) It is --

Q Excuse me.

Your specifications provide for painting of, "Existing, previously-painted surfaces."

Is that correct?

A Correct.

Q And there is no amendment to that in your

specifications; is that correct?

A It is in this school, particularly in this school is no class rooms.

Q That's not the answer to my question.

My question is:

The specification provides for painting of existing, previously-painted surfaces; is that correct?

A That's correct.

Q And there is no amendment to that; is that correct?

A I have to study my specifications to find out --

Q Study it.

A -- what is omitted.

Q Amendment No. 1, 2-22 -- February 22nd?

A No.

This is amendment No. 1, 22 pages got to be, an edition of 1970 of the standard specification and instructions to be for 1969.

Q I withdraw the question about the amendment.

Let me ask you another question instead, Mr. Demetriades.

A Yes, sir.

Q Is Casual Decor Painting -- are they still engaged in painting the Sarah J. Hale School?

A Well, the job is not completed.

Q Not completed?

A That's correct.

Q And do you know -- strike that.

You testified that you had an offer sometime in July from Casual Decor to subcontract out the Sarah J. Hale School.

Is that correct?

A Yes.

Q And you did not accept the offer in July but chose rather to accept it on January 21st?

A We have --

MR. FEINSTEIN: Objection.

You Honor, that's not what he said.

MR. EDELMAN: Withdraw the question.

MR. FEINSTEIN: Okay.

BY MR. EDELMAN:

Q Now, have you subcontracted any of the painting in the 194 school?

A 194?

Q Yes.

A You -- are you referrring only for painting?

Q Only for painting, yes.

A 194?

Q Yes.

A No.

Q You have not?

A No.

Q And have you subcontracted the painting work that you're supposed to do in the P.S. 75 school?

A 75?

Q Yes.

A Let me see.

No records.

Q So then I take it you have not subcontracted the painting work for P.S. 75?

A No.

Q And how about in the P.S. 96 school, have you subcontracted the painting work to be done for P.S. 96?

A I have no records.

Q So that I take it you have not subcontracted the work, the painting work that is, for P.S. 96?

A Not yet.

JUDGE WEIL: Am I correct in taking it from your last answer that you expect to subcontract the work on these three schools?

MR. EDELMAN: I would object to the question, your Honor, as conjectural in the future.

We can only really consider what he has done, not what he plans to do.

What he expects to do, your Honor, is highly problematical and not reliable in the way of evidence.

JUDGE WEIL: This is the man that's the main administrative officer of the corporation.

What he expects to do, I imagine, is pretty much what he is --

MR. EDELMAN: It could be self-serving, as well, your Honor.

JUDGE WEIL: It certainly is.

THE WITNESS: I can explain?

JUDGE WEIL: Do you expect to --

THE WITNESS: I expect, yes.

JUDGE WEIL: Thank you.

Proceed.

BY MR. EDELMAN:

Q Now, Mr. Demetriades, in January of -- from January 1, 1973 to January 1, 1974, had you laid off any of your employees during that period of time?

A January --

Q January 1, 1973 to January 1, 1974, had you laid off any employees during that year, that period of time?

A Yes.

Q And can you tell me when you laid them off and who you laid them off?

A In between jobs, I don't have records with me.

Q I just recall doing so?

A Yes, sir.

Q I see.

With respect to the employees set forth in the charge, I take it that from the time they were employed until the time they were laid off, there were no intervening lay offs?

Do you understand my question?

A No.

Q In other words, if a particular employee among those named in the charge was employed in July, I take it that he worked steadily until the date of his ultimate lay off on January 25th or February 4th as in the case of Pantzos; is that correct?

In other words, he was not laid off sometime in September and recalled in October and laid off in November and recalled in December, was he?

A Not.

Q No?

A No.

But they are not all hired on the same date.

Q I understand that.

A You know, and laid off on the same date.

Q I understand they were hired on different dates.

But from the date of their hire, they worked continuously until their ultimate lay off?

A Until the job is completed.

Q Until there ultimate lay off, in this case as set forth in the complaint?

A Yes.

Q Now, with respect to your contract in the Sarah J. Hale School, have you notified the Board of Education that you have subcontracted the work?

MR. FEINSTEIN: Objection, your Honor. Completely not relevant.

MR. EDELMAN: I'll ask another question. I'll withdraw that question.

JUDGE WEIL: All right.

BY MR. EDELMAN:

Q Is there a requirement, Mr. Demetriades, by the Board of Education that requires that you notify the Board of Education of any subcontract that you do?

MR. FEINSTEIN: I'll again object, your Honor.

JUDGE WEIL: I'll overrule that objection.

A Excuse me?

Q Is there a requirement, Mr. Demetriades, by the Board of Education that you notify them and get their permission to subcontract work which you have been awarded?

A If the subcontractor is not approved by the Board of Education.

Q You must -- in other words, you must notify the

Board that you want to subcontract and get their permission to do so; is that correct?

A Correct.

Q Now my question is:

Did you do so in connection with Casual Decor Painting in connection with the Sarah J. Hale job?

MR. FEINSTEIN: Objection, your Honor.

JUDGE WEIL: Overruled.

A Excuse me?

Q Did you contact the Board of Education and get their written permission to subcontract out the painting work in Sarah J. Hale?

A No.

Q There was a petition for an election which was filed on January 23, 1974 and you got a copy of that petition; is that correct?

A In this building.

Q Yes.

A Yes.

Q And you attended a conference at that time --

A Yes.

Q -- in this building?

A Yes.

Q And you spoke to, I imagine, union representatives were there and there was a Board attorney that was there?

A Yes.

Q And you discussed things at that time; is that correct?

A Correct.

Q And you stated a position with respect to the petition at that time; is that correct?

A Correct.

Q And isn't it a fact, Mr. Demetriades, that in connection with that petition, the position that you took -- isn't it a fair statment to say that the position that you took was that as of January 25th you would begin subcontracting and that way you could keep the employees off the pay roll and not have union problems?

MR. FEINSTEIN: Objection, objection.

What meeting are we talking about now?

MR. EDELMAN: I'm talking about a meeting in connection with the discussion on the petition.

MR. FEINSTEIN: Is this sort of a pre-hearing or pre-trial conference?

MR. EDELMAN: Not a pre-trial hearing.

It was a hearing in connection with a petition for an election, period.

MR. FEINSTEIN: Was it a formal hearing or an informal hearing?

MR. EDELMAN: It was an informal hearing.

MR. FEINSTEIN: Then I'll object, your Honor.

It's like a settlement discussion.

I would object on those grounds.

MR. EDELMAN: I'm not talking about any statements that were taken, I'm just merely asking if at that time Mr. Demetriades, in connection with the petition, took a certain position. I state the position and ask if that's the position that he took.

JUDGE WEIL: Was this at a conference investigating the representation case petition?

MR. EDELMAN: To my knowledge, it was, your Honor.

MR. FEINSTEIN: And petitioner was not -- and the Respondent was not represented by counsel, your Honor.

I submit that this is similar to asking a witness in an accident case, is it not true in a pre-trial conference you offered to accept the sum of $500 in settlement?

It's greatly prejudicial.

JUDGE WEIL: It may be prejudicial to him if he made a statement to a Board agent at that time that is now contradicted by a statement at this time, but it's not prejudicial -- unless he wants to take the Fifth.

Now, that's another matter.

But you know it is a violation to make an

untruthful statement to a Board agent in the course of his work under some circumstances.

Now, I don't know about this.

Is this the position you're taking?

MR. FEINSTEIN: That what?

About taking the Fifth?

JUDGE WEIL: Yes.

MR. FEINSTEIN: No, no, absolutely not.

JUDGE WEIL: Then I'll overrule your objection.

A May I see what the --

JUDGE WEIL: At the pre-trial conference on a certain date --

BY MR. EDELMAN:

Q I just asked you a question, Mr. Demetriades. I asked you if you can recall at any time, whether it was in the pre-trial conference or in connection with a telephone conversation with anybody or at any time in connection with that petition for an election, you took the position that you would -- as of January the 25th -- lay off the employees, keep the employees off the pay roll and not have union problems?

Did you take that position or did you not?

A I don't recall.

Q You don't recall it?

A No.

MR. EDELMAN: No further questions.

JUDGE WEIL: Mr. Feinstein?

MR. FEINSTEIN: I have nothing further, your Honor.

JUDGE WEIL: I think I may have one or two questions.

Mr. Demetriades, after Mr. Satchell completed his work at P.S. 165, he went to the Newtown High School?

THE WITNESS: Yes, sir.

JUDGE WEIL: And did he then -- Mr. Satchell -- did he then become the supervisor at the Newtown job?

THE WITNESS: Forward.

JUDGE WEIL: The foreman?

THE WITNESS: Yes.

JUDGE WEIL: What happened to Mr. Castro?

THE WITNESS: He was working together because Mr. Satchell doesn't speak Spanish, Castro stayed there and he was running, also, was talking with people.

JUDGE WEIL: On February the 4th you said that nothing remained at the Newtown job but scraping the floor of the gymnasium?

THE WITNESS: Newtown?

JUDGE WEIL: Yes.

THE WITNESS: No.

That's 165.

JUDGE WEIL: I mean 165.

All that remained there was scraping the floor of the gymnasium?

THE WITNESS: Yes.

JUDGE WEIL: And the kickplates, I assume?

THE WITNESSS: Yes.

JUDGE WEIL: Is there any reason why the floor of the gymnasium was not scraped?

THE WITNESS: Because Mr. Pantzos was called back to redo that job and he didn't show up.

JUDGE WEIL: When was it that he was recalled back to do the job?

THE WITNESS: I don't recall exactly the date. It was the date that he applied for unemployment.

I replied myself to the Labor Department that I have work for him to do.

This floor has been left uncompleted.

JUDGE WEIL: It has not been completed yet?

THE WITNESS: No.

JUDGE WEIL: Was there any reason why it wasn't completed on February 4th or on the next day?

Why did you lay Mr. Pantzos off rather than have him complete the floor --

THE WITNESS: Because I have correspondence, they tell me to -- we take one by one, the schools for

the floor.

One man does this job. I train Mr. Pantzos to do this job.

He was finished -- he finished the Newtown High School, and I have to go and make arrangements, get the children off the gymnasium, take the okay from the principal and get ready to go start the other job.

So it was in between three days, four days that I lay off --

JUDGE WEIL: Within three or four days --

THE WITNESS: Three or four days until my superintendent has to go make the arrangements to take the date for the other gymnasium to be available.

JUDGE WEIL: All right.

Now, you testified that -- or, rather, you agreed with counsel that you had told the union agents to organize your competitors and then you would join the union, or told them that in effect?

THE WITNESS: In effect, yes, I told them that.

JUDGE WEIL: Why did you tell them that?

THE WITNESS: Because all the industry, the entire industry with the Board of Education is not -- doesn't belong to the District Council No. 9.

JUDGE WEIL: Well, what's the difference to you whether he organizes your competitors?

THE WITNESS: Because if you are organized with District Council No. 9, they have extra men employed on the job as Steward and foreman and whatever other people and is no -- they don't produce, they just sit and doing nothing.

JUDGE WEIL: Now, you testified there was an amendmentment to the Sarah Hale contract that eliminated the painting of class roooms.

THE WITNESS: Your Honor, this is an annex; this modernization or welfare building -- it wasn't a school before.

The Sarah J. Hale School, the actual Sarah J. Hale School is located next to this building. This building has been used before for welfare. The only work we have to do there, your Honor, actually it was to modernize the basement, which was a printing shop, and to make a gymnasium for the children so we can accommodate the Sarah J. Hale High School children into the new gymnasium which is called an annex.

This is not a school.

JUDGE WEIL: It's another building of a school?

THE WITNESS: It was another building which we make a school.

JUDGE WEIL: All right.

Now, finally, Mr. Demetriades -- and I think this

is the last one -- you testified that you expect to subcontract the paint work at P.S. 194, 75 and 96?

THE WITNESS: Correct, your Honor.

JUDGE WEIL: Have you notified the school board of that fact?

THE WITNESS: I don't have to notify the school board.

JUDGE WEIL: You don't?

THE WITNESS: No, sir.

JUDGE WEIL: And you don't -- strike that.

Have you selected the subcontractors?

THE WITNESS: Not yet, sir.

MR. EDELMAN: I have just a couple of questions, your Honor.

JUDGE WEIL: All right.

But first of all, let me be sure I have asked all that I have asked.

Yes.

CROSS EXAMINATION (CONTINUED)

BY MR. EDELMAN:

Q With respect to Mr. Pantzos, it's a fact, is it not, that you never communicated directly with Mr. Pantzos and asked him to return to work, either by phone or by mail?

A No.

I told him when I have work, I notify you.

Q Right.

And you never did?

A No.

Q It's also a fact, is it not -- I think you stated it before, but I just want to be sure -- that the Casual Decor is still presently working on Sarah J. Hale?

A Not working.

Q They're not working --

A The job has been stopped for electrical work.

Q I see.

But they were working on it beginning in February?

A They were working, yes.

MR. EDELMAN: I have no further questions, your Honor.

JUDGE WEIL: Mr. Feinstein?

MR. FEINSTEIN: Nothing further, your Honor.

JUDGE WEIL: Thank you.

You may step down.

THE WITNESS: Thank you very much.

(Witness excused.)

MR. FEINSTEIN: I have nothing further, your Honor.

JUDGE WEIL: Very well.

Does General Counsel wish to call any rebuttal?

MR. EDELMAN: I just would like to call Mr. Jaume, your Honor.

JUDGE WEIL: Is that for the purpose which we discussed yesterday?

MR. EDELMAN: Yes, it is, your Honor.

JUDGE WEIL: You feel it's necessary?

MR. EDELMAN: Well --

JUDGE WEIL: Is ti the testimony --

MR. EDELMAN: Well, I'm going to shorten it some, your Honor, and just have him corroborate the statements -- the conversation that ensued between Mr. Prote and the union agents.

JUDGE WEIL: Very well.

Whereupon,

FRANK JAUME,

was called as a witness and having been first duly sworn by the Administrative Law Judge was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDELMAN:

Q What is your full name?

A Frank Jaume.

Q Mr. Jaume, are you employed by District Council 9?

A I am.

Q And your position with District Council 9?

A I'm the special organizer for the District Counncil 9 Brotherhood of Painters and Allied Trades.

Q And were you the -- a special organizer on January 18th?

A Yes, I was.

Q And were you present in the Newtown High School on January 18th?

A Yes.

Q Around noontime hour?

A Right.

Q. Were you present in connection with a conversation that occurred between Mr. Prote and Mr. Blumberg and Mr. Topp and yourself?

A I was.

Q And can you tell me where this conversation took place?

A By the -- right outside the printing room in the corridor.

Q And what floor was this?

A On the main floor.

Q And who was present?

A Mr. Blumberg, brother Topp, myself and Mr. Demetriades.

Q Mr. Demetriades or Mr. Prote as he is sometimes

called?

A Yes.

Q Can you tell me what you and the other union agent said to Mr. Prote, or Mr. Demetriades, and what, in turn, said to you?

A Mr. Blumberg informed Mr. Prote in a nice way--first they greeted each other.

He introduced us.

Mr. Blumberg asked Mr. Prote if he's willing to come into the union.

As a matter of fact, he mentioned that some other painting companies have been organized.

Mr. Prote infomred Mr. Blumberg and myself and Mr. Topp that he is getting out of the painting business and he's firing all the men.

This was his last job, he told us.

Q Anything else that you can recall in connection with the conversation?

A I think Mr. Blumberg told him that he has some other painting contracts.

Mr. Prote said that he is going to subcontract all his painting work.

Q All right.

MR. EDELMAN: I have no further questions, your Honor.

CORSS EXAMINATION

BY MR. FEINSTEIN:

Q Mr. Jaume, as far as you recall, is that exactly what Mr. Demetriades said, he was getting out of the painting business and firing his men?

A As a matter of fact, he even -- yes, he stated that.

Q Did he say anything else?

A He stated -- yes, he did.

Q What else did he say?

A Well, as I recall it, that he's firing the men, he's going to subcontract all of the work.

Q But that's what he said, to the best of your recollection?

A Right.

Q He said nothing else?

A Not that I recall.

Q Did he say anything that he's trying to tell his men not to join the union?

Did he say that?

A He didn't say that.

Q Did he say he's getting out of the painting business because he doesn't want to join the union?

Did he say that?

A No.

Q He just said he's getting out of the painting business; is that right?

A Right.

Q He didn't give any reason why he's getting out of the painting business; is that right?

A Well, one of the things he said is he's losing money.

Q Okay.

Do you think it's unfair for a man to get out of--

MR. EDELMAN: Objection.

MR. FEINSTEIN: I didn't finish my question.

MR. EDELMAN: I'm sorry.

BY MR. FEINSTEIN:

Q Do you think it's unfair for a man to get out of the business when he's losing money in the business?

MR. EDELMAN: Objection.

JUDGE WEIL: I don't think it's important for him to answer that question.

I'll sustain the objection.

His opinion to that question is irrelevant.

BY MR. FEINSTEIN:

Q And that was the reason he gave for getting out of the business, because he was losing money?

A No, that wasn't the reason.

Q But he mentioned that, is that right, that he

he was losing money?

A It wasn't exactly like that.

He said it's very competitive.

Q All right.

You took it to mean that he was losing money?

MR. EDELMAN: Objection as to what he took it to mean.

It's what he said that counts.

JUDGE WEIL: Now you have the witness saying that he said something other than what he first said, so maybe that's the explanation.

What do you recall him saying?

THE WITNESS: Well, he said, you know, it's a very competitive business -- this is actually what he said:

It's a competitive business and he says -- and Mr. Blumberg brought out that other contractors were signed up.

And he says, "Look, I'm getting out of the business and I'm firing all of the men and subcontracting my work."

BY MR. FEINSTEIN:

Q Other than what you have already testified to, did he give any other reason for getting out of the business?

A No, I don't recall.

MR. FEINSTEIN: No other questions.

MR. EDELMAN: No further questions.

JUDGE WEIL: Thank you.

You may step down, Mr. Jaume.

(Witness excused.)

JUDGE WEIL: Anything else?

MR. EDELMAN: I have no further witnesses, your Honor.

JUDGE WEIL: Mr. Feinstein, do you propose to leave the originals of these documents in evidence or are you going to substitute?

MR. FEINSTEIN: I can give you my copies, Judge, which are the exact same things.

JUDGE WEIL: Well, it doesn't matter.

It's just that it has been my experience that generally speaking, parties that subpoena documents like this, substitute copies of them and return the originals.

I'm not asking you to do so.

MR. FEINSTEIN: I understand.

JUDGE WEIL: But if that's what you propose to do, I want to make sure that you make sure that they're legible copies.

MR. FEINSTEIN: Yes.

MR. EDELMAN: You can submit copies off of a

Xerox machine.

MR. FEINSTEIN: We have copies.

We'll give you our copies.

MR. EDELMAN: Very well.

JUDGE WEIL: Is there anything further to come before me?

MR. FEINSTEIN: No.

MR. EDELMAN: No.

MR. FEINSTEIN: Except, your Honor, I renew my motion made at the end of counsel's case.

JUDGE WEIL: I'll take that under advisement now.

Does anybody want to argue on the record or file briefs?

MR. EDELMAN: Counsel for General Counsel may well file a brief.

I'm not sure what we'll do at this point.

But I would like to argue briefly orally on the record, if I may.

JUDGE WEIL: Very well.

You may now.

MR. EDELMAN: Your Honor, counsel for the General Counsel takes the postion that essentially this is a case which concerns an individual who is in a competitive business, he's bidding against others in the same business for jobs and his very livelihood depends on

being successful in these bids.

It's obvious that a person has more flexibility if he does not have a contract with a labor organization for a number of reasons which I don't have to enumerate at this point.

It's obvious also that in a business where some of the contractors are members of the union or are parties to a collective bargaining agreement with the union and others do not have a collective bargaining agreement with the union, that those who do not have a collective bargaining agreement have an advantage over those that do.

It's understandable from a business point of view that Mr. Prote would take the position when approached by the union that it is a competitive business and that if you organize my competitors, then I will sign because at that point in time we will all be equal.

It's also understandable, your Honor, that Mr. Prote would r t unionization of his employees unless his competitors were organized.

It's obvious that Mr. Prote was aware of the union's organizational campaign as early as the fall of 1973, and this is evedenced by Mr. Blumberg's conversation with him during that period of time when he tried to get him to sign a contract.

Mr. Prote was aware of the continued organizational campaign by District Council 9 of his employees throughout the fall and into the winter of 1973 and 1974 because he was informed about them by his supervisor.

We take the position that Mr. Prote knew what was coming on January 18th and he was not surprised to see District Council 9 there, he knew it was going to come sooner or later because he was aware of the activities.

And so when District Council 9 approached him on January 18th and asked him to join and told him that the employees had indicated a willingness to join, at this time Mr. Prote, taking advantage of an offer made to him in July which he didnot accept as to this demand for recognition, said that I'm going to subcontract out the work, I'll go out of the painting business, rid myself of employees, don't have to worry about having employees, don't have to worry about having a union contract.

In fact, three days -- I must point out that it was just three days after the demand for recognition was made that the subcontracting agreement was executed, an agreement which had been offered as early as July of 1973 but was not accepted until three days after the demand for recognition by District Council 9.

Mr. Prote was aware of the work that he had at

the Newtown School, at the 165 school.

He was, also, aware of the other jobs which were to begin in June.

He was also aware that the Sarah Hale job was to begin sometime in January or February and that unless he could unload this job, he would have to use his employees to do it.

If he was going to use his employees to do it, the union was going to be on his tail.

As a matter of fact, on June 23rd they filed a petition and on January 25th he was certain that he better lay them off quickly so that there would be no employees and no election.

We don't know what Mr. Demetriades is going to do in connection with work that is to begin in June or July.

That's problematical.

I would say that it would be safe to assume, since he has not made any subcontracts out at the present time, that he will wait and see which way the wind blows, where the union is, how he can deal with it and then deal with it at that time in some self-serving manner.

The evidence indicates that had he not subcontracted out the Sarah Hale School job, he would have had work available.

It's a $10,000 job.

The work was begun in February and the work is still not completed. It would have been his employees that would have done this work.

We would submit that there would have been no need to lay off the employees who were laid off.

It's true they might have received work on the 165 school and it's true they might have received work on the New town High School, although we don't concede that that is necessarily the case.

But we do assert that they would have undoubtably begun work on the Sarah J. Hale School, which work they were deprived of by the subcontract, which subcontract was entered into because of the demand for recognition, three days after the demand for recognition, the employees being laid off two days following a petition being filed.

We would submit that the statements to Mr. Blumberg, the subcontract made when it was, the lay offs occurring when they did and the petition being filed when it was, is circumstantial evidence that establishes rather conclusively, I feel, that the lay off and the subcontract were discriminatiorally motivated.

It's clear that an employer can violate the act without engaging in a long and extensive campaign

harassment of the employees and interrogation and threats and speeches.

As a matter of fact, from an employer's point of view who intends to violate the law, the better way to do it is probably just to do it and not to talk to the employees about it.

We suggest that that is exactly what has been done here. We suggest that the circumstantial evidence and the documents that we have in connection with the Sarah Hale contract establish this and establish the violation.

JUDGE WEIL: Thank you, counselor.

Did you want to answer or did you what to file a brief, or both?

MR. FEINSTEIN: Well, let me talk a little while.

JUDGE WEIL: Counsel always wants to answer.

(Laughter.)

MR. FEINSTEIN: Your Honor, this is as clear a cut case as I ever come across.

The complaint is very clear in its allegations.

The General Counsel has already omitted one paragraph because it was too weak to even argue about.

Paragraphs 10 and 11 clearly say that Mr. Demetriades threatened his employees.

Counsel, by its own witnesses, failed to establish its case.

Not one employee mentioned any threats. Every employee said that Mr. Demetriades never mentioned the union to them.

In fact, Alfonso Castro, who is a supervisory employee of Prote, induced these people to join the union.

Alfonso is still employed by Prote. Alfonso is a union member.

It seems to me logical, your Honor, that if Prote was in a campaign against the union, he would have clamped down on Alfonso and say:

Hey, you better not tell these men to join the union, what are you doing here?

We knew what was going on. Mr. Demetriades knew the union was there.

He knew Alfonso was joining the union. He knew Alfonso was the only one to talk to these men because he hired them, he was friends with them, he roomed with one of these men and he's the one that said that the union is a good thing, I think we ought to join it.

You have not only our testimony but the documents themselves from the Board of Education showing, number one, that the work at 165 was 99 percent complete when

we laid off the men -- we didn't lay off the men -- we just had nothing for them to do at 165.

At Newtown High School, the work was 75, 80 percent complete. We only had a few areas to work on.

You don't do a job like that with eight men.

If we had eight men to do an entire high school when we reached the bottom and we just have some stairways and an auditorium to do, you don't use eight men anymore.

It's logical. The documents bear out the truth of our statements.

Mr. Edelman's big argument here is the Sarah J. Hale subcontract.

Even if we wanted to do it ourselves, it was a $10,000 contract, it would take maybe two men -- and they're talking about eight men.

So, at most, we could have hired two men to do a $10,000 contract.

Number two, the intent to subcontract that work out was in July of 1973, that is, before this dispute even arose, before some of these employees were even hired.

You don't get a price from a subcontractor to submit in your bid unless you intend to subcontract out your work.

I mean, it's obvious. When a subcontractor is getting up an estimoate to submit to a municipality, he calls up a subcontractor: Give me your price.

He uses his price going in on a bid, and then later on when the work is ready you sign a subcontract.

There is not one iota of evidence, nothing to support any of the allegations in this complaint.

Mr. Edelman talks about we could assume that later on he's going to see which way the wind blows, he tried to defeat the union, he subcontracted out this work just not to employ these employees; but he can't explain away the intent which is stated in the July 18th price by Casual.

This is a case where the union is seeking recognition from a contractor, he refuses to recognize them, and they're harassing him.

From your own witness, this last witness that they had, your Honor, he testified that Mr. Demetriades intimated that he's getting out of the painting business because he's losing money.

I think that's a perfectly legitimate reason to get out of the painting business, if this was the fact.

We don't dispute any of the testimony from any of their witnesses. I submit that if every one of their witnesses was believed in total, their complaint is

not established.

Our defense that the work was complete -- and that's why we laid off the men -- cannot only be believed because of our oral testimony but because of the documents.

I ask for a complete dismissal of this complaint as being completely void of any proof submitted at this hearing.

Thank you, your Honor.

JUDGE WEIL: Thank you, counselor.

Now, does anyone -- are the parties prepared to waive briefs?

MR. FEINSTEIN: I'm prepared to waive brief if General Counsel is.

If not, then I'll wish to have a chance to reply to his brief.

JUDGE WEIL: You won't have a chance for reply brief.

Simultaneous briefs may be filed if you want to.

MR. EDELMAN: May we take a five-minute recess and I'll let you know if I can waive a brief?

JUDGE WEIL: Yes.

Off the record.

(Discussion off the record.)

JUDGE WEIL: Back on the record.

All parties have waived briefs.

The hearing is closed.

(Whereupon, the hearing was concluded at 1:10 p.m.)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner,	)	
v.	)	No. 76-4243
PROTE CONTRACTING CORP. Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the appendix in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

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Elliott Moore
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NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 3rd day of March, 1977.